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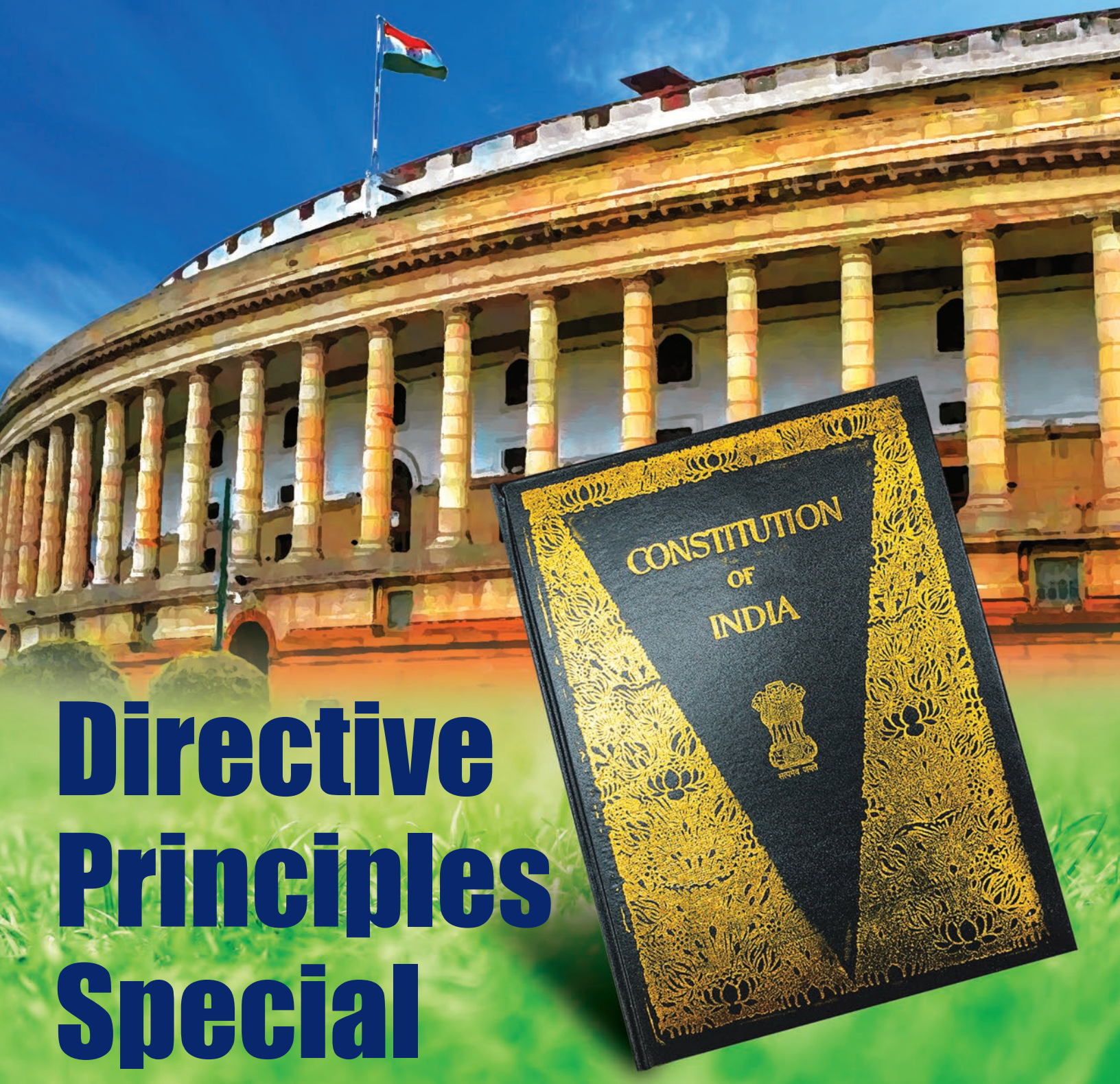
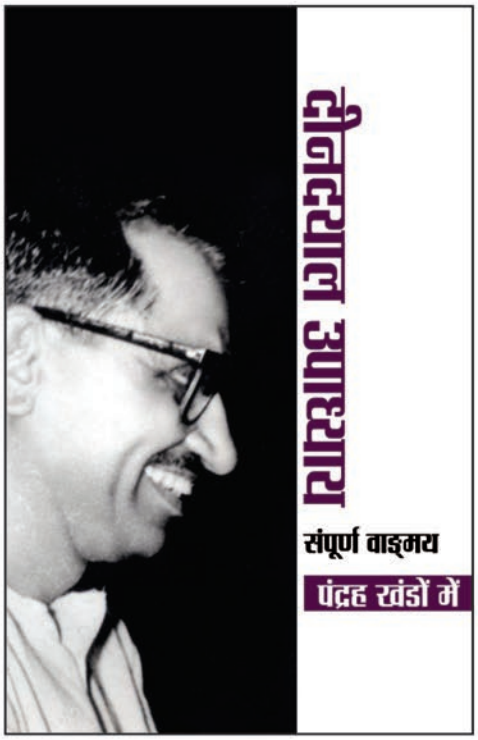


Directive Principles Special

प्रभात प्रकाशन

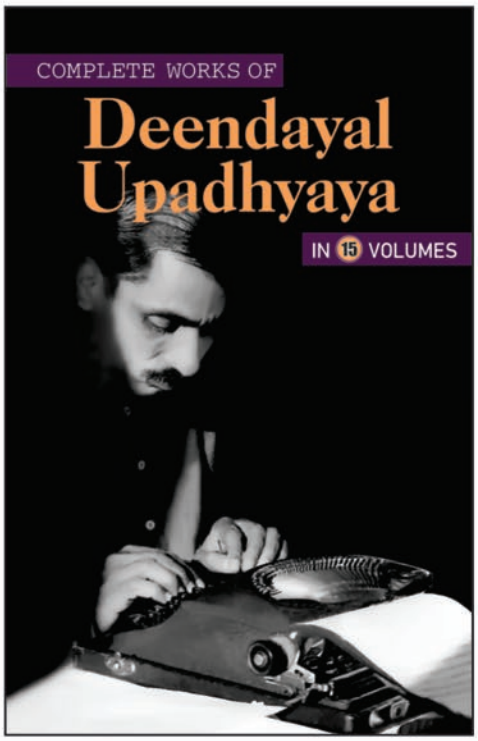
नवनूतन प्रकाशन की गौरवशाली परंपरा



दीनदयाल उपाध्याय

संपूर्ण वाङ्मय (पंद्रह खंडों का सैट)

9 अक्तूबर, 2016 को नई दिल्ली के विज्ञान भवन में पं. दीनदयाल उपाध्याय जन्म शताब्दी वर्ष के अवसर पर डॉ. महेश चंद्र शर्मा द्वारा संपादित एवं प्रभात प्रकाशन द्वारा प्रकाशित 'दीनदयाल उपाध्याय संपूर्ण वाङ्मय' के पंद्रह खंडों का लोकार्पण भारत के प्रधानमंत्री मान. श्री नरेंद्र मोदी, राष्ट्रीय स्वयंसेवक संघ के सरकार्यवाह मान. श्री सुरेश (भय्याजी) जोशी व भारतीय जनता पार्टी के राष्ट्रीय अध्यक्ष मान. श्री अमित शाह के करकमलों द्वारा संपन्न हुआ।



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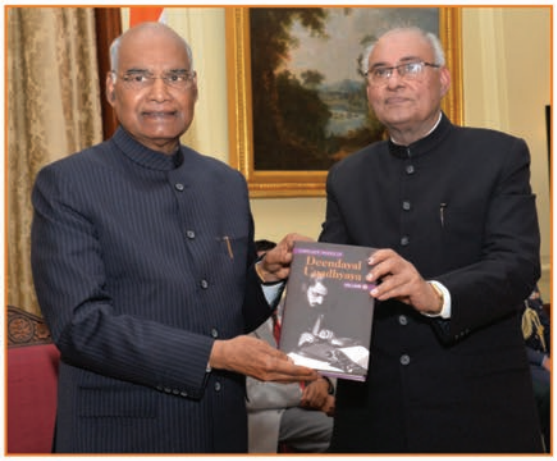

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Directive Principles Special

Editor
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Dr. O.P. Shukla is a Dalit activist, lawyer and constitutional expert who retired as an Indian Legal Service (ILS) officer. He is a Judicial Member of Income Tax Appellate Tribunal and Legal Advisor to Defence and Railways ministries. He is also an Assistant Professor at Indian Law Institute, New Delhi. Mob: 9958788825

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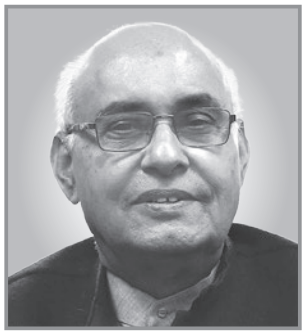


Dr. Mahesh Chandra Sharma

Editorial

The Special Issues on "Indian Constitution and Gram Swaraj" and "Indian Constitution and Minorities" have received your warm response, for which I am very grateful.

The Special Issue on the Directive Principles of State Policy is in your hands. The material on the subject is so exhaustive in the articles inside that it does not need a mention in the editorial.

The story of how India's polity has dealt with this important part of the Constitution is also contained in these articles. The ink of the signatures on the draft of the Constitution document had not yet dried when the country's then political leadership brought a "Hindu Code Bill" in the House against the policy directive of the Uniform Civil Code.

This is but one tale that merits mention here, regarding the treatment of the Directive Principles. Gandhi's organisation the Sarva Seva Sangh too passed a resolution with regard to the Constitution, which reads as follows: "The Sarva Seva Sangh convention, which was held in Indore at the end of November 1999, has adopted a further step. Even after the completion of fifty years of the Constitution of India, the Directive Principles mentioned in it have remained only on paper. During this long period, far from governments following these Directive Principles, in many respects the governments have traversed the opposite direction. Among these are issues such as the eradication of drugs, cow protection, protection of the environment, suitable means for livelihood for all and decentralisation of wealth, the right to work, right to self-government to village panchayats and education to all boys and girls within ten years, etc. The people of the country have to take this reality seriously. In this situation, it has become necessary to include the Directive Principles in the Fundamental Rights. The government, the people and all of us will therefore, have to become committed in order to implement the

Directive Principles" (*Bharatiya Samvidhan ki Ankahi Kahani*; Ram Bahadur Rai, p. 14).

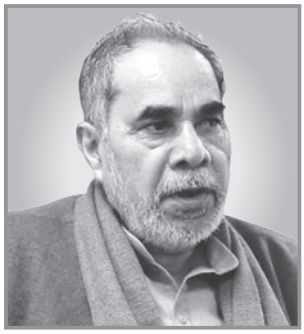
It is highly essential to enhance constitutional literacy in our society. If the government has neglected this element, society too has not been attentive towards the same! This issue of *Manthan* is an endeavour addressed to the cause of public literacy in this context. Let us put ourselves to this task together. We are privileged to have obtained intellectual support of Dr. Pradeep Kumar in this issue of *Manthan*. I accord my heartfelt gratitude to him.

There still remains one more issue of this 75th anniversary year of the country's Independence. That issue will be dedicated to "The Constitution of India and the Merger of the Princely States". The next issue of *Manthan* (October-December 2022) will be a special issue dealing with the merger of the (erstwhile) princely states. These four special issues are historical. There is also a need to increase the circle of readers of *Manthan*.

Shubham!

mahesh.chandra.sharma@live.com

The Soul of the Constitution: Preamble, Fundamental Rights and the Directive Principles



Ram Bahadur Rai

The heart of our Constitution actually beats in its three-fold latent structure of its Preamble, Fundamental Rights and the Directive Principles. A critical study of the essence in a broader perspective

The great litterateur Mahadevi Verma once asked Laxmi Mall Singhvi, "You are considered a renowned expert on the Constitution, but, in your opinion, is there a Heart of the Constitution?"[1] Singhvi, who was also a scholar of literature and culture, said, "Every lively Constitution has a heart and also beats. The Individual and Society live in the Constitution's consciousness, in which lies the past, present and future of the individual and society."[2] The answer to this question depends on who is asking it and also on who is giving the answer. If a doctor will ask this then he will like to know where is the 'heart's' place in the Constitution and what is its condition? In a human body the place of the heart is fixed. Nature has also fixed its job. But the question of a 'heart' of the Constitution relates to its 'soul' which has been described by various Constitution-experts on the basis of the basic foundation of the Constitution and its soul. This is still going on, it has not stopped. These things also depend on the viewpoint with which we are looking at the Constitution. Is the Indian Constitution a religious text or just a book?

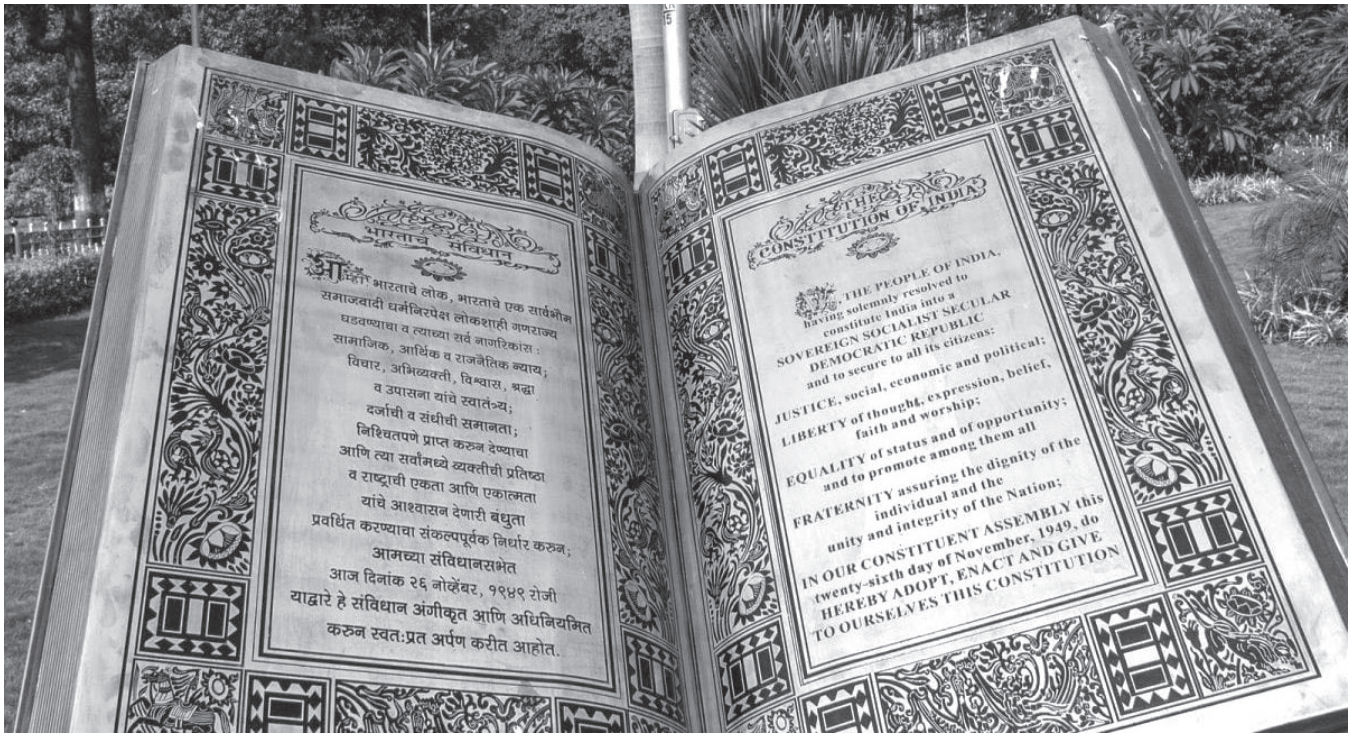
Any Constitution is that particular book of any country by which the polity is run. Former Law Minister Ravishankar Prasad calls the Constitution a book which is the "Supreme political document."[3] A book can be amended but a religious text cannot be amended. This is a real question and not a hypothetical one. The question is what analogy should be given to the Constitution? It is so because efforts have been made from the beginning to give different analogies to the Constitution. There are several examples of this. Take the example of Leela Seth, who was the Chief Justice of the Himachal Pradesh High Court. She wrote a book to explain the Constitution to school children. The title of that book is- 'We, The Children of India, and the Objectives of Our Constitution.'[4] She wrote in that book, "Dear children, I have written in this book the objectives of the Indian Constitution for you all."[5] A question again arises here. There is a particular word in English- Preamble. But, in Hindi, generally two words are being used- '*Uddeshika*' or Preamble and '*Prastawana*' or Preface. In the Prime Ministers' Museum the word used is '*Prastawana*'. But, three experts of the Constitution, Dr. Durgadas Basu, Brajkishore Sharma and Subhash Kashyap have used the

word '*Uddeshika*' or Preamble in their books. The meanings of '*Prastawana*' and '*Uddeshika*' are different.

The word '*Uddeshika*' or Preamble is being used in this article. Well, we had started with the book by Leela Seth. She writes that "We can become good citizens only when we abide by the objectives of the Constitution. These objectives have been given in the Preamble or the long first sentence of the Constitution."[6] She writes further in her book that "What is called the Constitution of India has all those ideas and rules by which our country runs. It is the most important book of our nation. It begins with the Preamble or its prelude. This Preamble is like the soul of the Constitution. Our national objectives have been given in it, such as Justice and Equality (Justice which decides what is wrong and what is right). What is there in the Preamble? What is its meaning? How was it framed and who drafted it?"[7] The questions which Leela Seth has framed in order to explain these things to children, she has given the answers to these questions in simple words in her book, by which a character of the Preamble emerges. She has given the example of a book to explain the Preamble. She has termed the Preamble as the prelude of the Constitution.

The second question arises from this that whether a prelude can be changed? This is an extraordinary question. As much deep we dive inside this question, we would be immersed in a deeper puzzle. There is a danger of straying away from the basic subject in our quest to solve this puzzle. So, caution is necessary. The Constitutional expert Brajkishore Sharma has written in the beginning of his book, "Our Constitution is not the result of a revolution. It is the fruit of a 100 year effort.[8] The last sentence of this part is a great sentence. In other words it can be said that the Indian Constitution has emerged from a non-violent process. Another view is that it is the result of a political arrangement. There is some truth in this. Has it affected the Preamble of the Constitution, the Fundamental Rights and the Directive Principles? This also is a question. It is better to leave it as it is just now. First we shall learn what is the Preamble? Durgadas Basu has written that "Every Constitution has a philosophy."[9]

Thus, he terms the Preamble as the philosophy of the Constitution. Debate will continue about this. At present, in this article, an effort is being made to explain that the first puzzle which the Constitution experts faced was that whether the Preamble is an integral part of the Constitution? From this the interpretation of the philosophy



Courtesy: https://currentaffairs.adda247.com/constitution-of-india-preamble-2022/

of the Constitution begins. In the Constitutional system, it is the Supreme Court which has to interpret the Constitution from time to time as per need. It is an irony that the Supreme Court itself created confusion regarding the Preamble. In several verdicts of the Supreme Court confusion over the Preamble shows. On one hand, the Chief Justice of the Supreme Court believes that "The Preamble is the key to the hearts of the Constitution makers. Wherever there is any lack of clarity in the words, to understand the intent of the Constitution makers, help of the Preamble can be taken."[10] But, for a long time the Supreme Court did not accept the Preamble as a part of the Constitution. Justice Gajendra Gadkar had said that the Preamble was not a part of the Constitution.[11] This increased the confusion further.

But some clarity came when the Supreme Court ruled that the Preamble helps in understanding the Fundamental Rights of the citizens and also the Directive Principles of the Constitution. More clarity came when most of the Justices of the Supreme Court ruled, with references to the deliberations of the Constituent Assembly, that the Preamble is a part of the Constitution. Chief Justice S.M. Sikri in his ruling said that "The legislative history of the Constitution's Preamble justifies its importance. The Preamble is not only a part of the Constitution, it is rather extremely important. The Constitution should be understood by diving deeper into the words of the Preamble."[12] Thus, the Supreme Court clearly said that "The edifice of our Constitution has been built upon the basic fundamental elements as described in the Preamble. If any element out of these is removed the entire edifice will crumble and the Constitution will not remain the same or it will lose its personality and its identity."[13] This brought some clarity about the Preamble. But, a new question has arisen that what are the basic elements of the Constitution? These have remained undefined till now.

The Preamble has the philosophy of the Constitution. To learn and understand it, we must read the Preamble of the original Constitution. It should be absorbed totally. An internationally acclaimed philosopher Akash Singh Rathore has written, "The original Preamble has 44 words, if we do not include the declarative and the objectives part of it."[14] The words out of which the philosophy of the Constitution emerges are just six- Justice, Liberty, Equality, Dignity, Nation and Harmony. These words are not just words. All these words acquired a meaning during the freedom struggle. It is like a life-element in the national aspiration. The Constitution makers used these words to frame the Preamble. By these points, a branch of the Fundamental Rights grew out of the tree called the Constitution. But, it is also true that the Preamble is meant to be a guide. This is its limit, and its infinite possibility is also hidden in this limit only. If we consider the Constitution as the highest law of the land then its importance can be understood. The Preamble is in the beginning of the Constitution because "Law has to be interpreted and the Executive and the Judiciary have to be directed to implement the law properly."[15] But, the doors of the court cannot be knocked to acquire it as a right. This came out of a verdict of the Supreme Court.[16]

Does the Preamble include what Mahatma Gandhi wanted? Dr. Durga Das Basu has underlined this specially. He writes that "In the Preamble,what has been established with an effort by combining Equality and Harmony with Political, Social and Economic Democracy, was what Mahatma Gandhi had described as 'The India of my dreams."[17] He quotes one of Gandhi's sayings. It is, "An India where the poorest of the poor will think that this country is theirs and they are also contributing in building this country; an India where all communities will live in harmony; there will be no space in this India for the curse of 'Untouchability' or for intoxicating drinks or narcotics;

The Preamble has the philosophy of the Constitution. To learn and understand it, we must read the Preamble of the original Constitution. It should be absorbed totally. An internationally acclaimed philosopher Akash Singh Rathore has written, "The original Preamble has 44 words, if we do not include the declarative and the objectives part of it." The words out of which the philosophy of the Constitution emerges are just six- Justice, Liberty, Equality, Dignity, Nation and Harmony

where men and women will have equal rights."[18] The Constitution expert N A Palkiwala has described the Preamble as the introduction of the Constitution.

Who is the writer of the Preamble? Studies and research is going on about this. Common belief is that Jawaharlal Nehru is its chief architect. A second belief is that it is Sir Benegal Narsingh Rao. A third belief is that the Drafting Committee of the Constituent Assembly created it and gave words to it. A fourth belief is that it was drafted by Dr. Bhimrao Ambedkar with his feelings and political experience. All these beliefs have a history. There is some truth in it. But, Akash Singh Rathore has written in the foreword of his book that "The Preamble of the Indian Constitution has clearly been written by Dr. Bhimrao Ambedkar."[19] It might seem that this essay talks too much about the Preamble. If it seems so, the reasons behind it must be clarified. Even the people who know and use the Constitution don't give due importance to the Preamble. It can be better explained by an example. Like Kautilya's *Arthashastra*. It is a book about the ancient polity of India. It has been simplified in the *Panchatantra*. Even more easy to understand is the *Hitopdesha*. Similarly, the Preamble has those thoughts which give a feeling of an open sky to an Indian citizen. This is the part which everyone can understand because it is very clear and in points form.

This is being said from the day the Constitution came into force, in some way or the other, and also that where does the 'soul' of the Constitution is! More than seven decades have passed. In these seven decades, if ever there was any doubt or confusion in this regard, it has been dispelled. Now it is clear to everybody that the soul of the Constitution lies in the Preamble, the Fundamental Rights and the Directive Principles. These have mutuality. They should not be seen separately, because they are inter-related. This can be described in three words- Expression, Meaning and Intent. Expression means words. Meaning contains the introduction of that word. But the intent has to be understood. Only those would be able to understand the intent behind the Preamble, the Fundamental Rights and the Directive Principles who would be able to connect the strings of his mind to the feelings of the makers of the Constitution. In this way, it is possible to grasp the objective of the Constitution. However, it is simple to say, but difficult to do. Accepting it is even more difficult. Many hurdles come in between, and these hurdles are also created.

The Fundamental Rights have been included in the third part of the Constitution. They have a history which relates to the British rule. At that time, every effort was made to curtail the individual freedom of the citizens. It was a promise of the freedom struggle that citizens' freedom would be established. The Government of India Act, 1935 drafted by the Simon Commission and the Joint Parliamentary Committee, did not have a provision for fundamental rights

The Fundamental Rights have been included in the third part of the Constitution. They have a history which relates to the British rule. At that time, every effort was made to curtail the individual freedom of the citizens. It was a promise of the freedom struggle that citizens' freedom would be established. The Government of India Act, 1935 drafted by the Simon Commission and the Joint Parliamentary Committee, did not have a provision for fundamental rights. But the Nehru Committee report promised the country this provision. Based on that experience, keeping in mind the national aspiration, the Fundamental Rights and the Directive Principles were created, which made a provision for social, economic and political justice. "When the Constituent Assembly took upon the task of making the Constitution in its hands then it was decided to create a Charter of Rights first. The Constitution makers wanted that in that Charter of Rights, a clear character of the special values and ideas of the rich and diverse cultural tradition of India should be reflected, whose roots were engrained in the inspirations of the national freedom struggle. Soon, after passing through various stages and through the various committees of the Constituent Assembly, a broad Charter of Rights took shape. Dr. Ambedkar had termed the third part of the Constitution, which relates to the fundamental rights, the most deliberated upon part. It was deliberated upon for 38 days- 11 days in the

sub-committee, two days in the advisory committee and then it was discussed in the Constituent Assembly for 28 days."[20]

A common perception is that the provisions for Fundamental Rights in the Indian Constitution have been copied from the US. The truth is that the Indian provisions go much beyond the American provisions because the Indian Constitution establishes a co-ordination between the principles of Parliamentary Sovereignty and Judicial Supremacy. The British Parliament is supreme. In America, Judicial Supremacy is established. But, because the Indian Constitution is a written one, a co-ordination has been established between Parliament, the Judiciary and the Executive. This can be said in this way too that where America and Britain have opted for an extreme for themselves, India has gone for a middle path. The Indian life vision is not of delving in the extremes, it is of the middle path. An effort has been made in the Indian Constitution to convert this into polity.

However, this can only be said of the original Constitution. The government and parliament has changed the Constitution. The Supreme Court has changed it. Thus, the Constitution, which has been amended 103 times, is not the same as it was when it was implemented. It can be easily seen by two examples. The first example is of Congress rule. In all the amendments done from Pandit Jawaharlal Nehru to Indira Gandhi, major curtailment in fundamental rights was done. What can be a bigger mockery of the Constitution makers! The second example is of the Janata Government. That government, through one of its decisions, "eliminated an important fundamental right, the Right to Property, under Article 19(1) (F) and Article 31, through its 44th amendment act brought in a hurry."[21] The Fundamental Rights had seven rights included in them. Now they are six only. In part four of the Constitution, the Directive Policies are given. They are an ideal for which the governments should strive. But, through several amendments, even the Directive Policies have been changed. Originally, the Directive Policies were created so that the State would take steps for Public Welfare so that there is equality in opportunities and there is harmony in society. Dr. Subhash Kashyap has written, "Apart from safeguarding the basic rights of the individual, the Constitution makers also wanted that our Constitution should also become a tool to bring about a social revolution."[22]

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The Sarv Sewa Sangh passed a resolution 22 years ago. It goes like this, "In its convention held in November, 99 in Indore, the Sarv Sewa Sangh has decided upon another step. Even after the completion of fifty years of the Indian Constitution, the Directive Policies mentioned in it have remained on paper. In this long time, rather than abiding by these policies, the governments have gone actually in the reverse direction. Issues like elimination of narcotics, saving the cows, conservation of the environment, creating ample resources for employment to every person, decentralisation of property, right to work, self-governing rights to village panchayats, and universal education to all children within ten years are pending. The people of the country must take this reality in seriousness. In this situation it has become pertinent to include the Directive Policies in the fundamental rights. The cry for amending the Constitution is being raised from many quarters. Caution must be taken that this change should not come under control of communal and dictatorial forces. For this present situation, beside the governments, the people at large and the social workers may also be at fault. Therefore, in order to implement the Directive Policies, the government, the people and all of us must be committed."[23] The Sarva Seva Sangh kept on fast at many places on 26th of January 2000 to draw attention

of the government towards this resolution.

The Indian Government, from time to time, has indeed taken some welfare steps by amending the Directive Principles. But those steps are negligible. In the Directive Principles, article 44 is the altar. The point from where the puzzle of India's political-social problems emerges is in this article only, and it can be solved by abiding by this article itself. But, no government has taken any appropriate decision in this regard. The time today is most suitable for something like the Uniform Civil Code. Constitution Expert Brajkishore Sharma has written that, "Fundamental Rights and the Directive Principles have the same source. In Nehru's report of 1928, in which self- government was advocated for India, Fundamental Rights were given space. Right to Elementary Education was also included in that. In the 1945 Sapru Report, the Fundamental Rights were distinctly divided into two parts- those which could be enforced by the court and those which could not be enforced. The Constitutional advisor of the Constituent Assembly Sir Benegal Narsingh Rao had advised that the rights of the individuals should be divided into two groups- those which could be enforced by the court and those which could not be enforced by the courts. In his opinion, the second group was in the form of moral discourse for the officers of the state. His suggestions were also accepted by the drafting committee. As a result, Fundamental Rights which can be enforced by the court are included in Part III and the Directive Principles, which cannot be enforced by the courts, are in Part IV. The objective of both is social, economic and political justice and to gain the dignity and welfare of the individual.[24]

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References:

1. *Bharat: Azadi aur Sanskriti*, Dr. Laxmi Mall Singhvi, pp.30, 31
2. Ibid, p.31
3. *Hamara Samvidhan: Ek Punarawalokan, Samvadhanik Loktantra aur Moolbhoot Dhanche ki Awdharna*, Ravishankar Prasad, p.46
4. *Hum, Bharat ke Bacche, Hamaare Samvidhaan ki Uddeshika*, Leela Seth
5. Ibid, Foreword, p.1
6. Ibid, Foreword, p.1
7. Ibid, Foreword, p.8
8. *Bharat ka Samvidhan: Ek Parichay*, 13th Edition, Brajkishore Sharma, p.1
9. *Bharat ka Samvidhan: Ek Parichay*, DurgadasBasu, SanvidhanDarshan, p.22
10. *Hamaara Samvidhan: Bharat ka Samvidhaan aur Samvaidhanik Vidhi, Uddeshika*, Dr. Subhash Kashyap, p.44
11. Ibid, p.44
12. Keshawanand Bharti vs State of Kerala, A.I.R 1973, S.M. Sikri
13. Hamara Samvidhan: Bharat ka Samvidhanaur Samvaidhanik Vidhi, Dr. Subhash Kashyap, p.45
14. *Ambedkar's Preamble: A Secret History of the Constitution of India*, Akash Singh Rathore, Preamble
15. *Bharatiya Samvidhan, Rachana evam Karya, Bharatiya Samvidhan ki Atma*, Shibani Kinker Chaubey, p.16
16. Gopalan vs Madras State, (1950), ACR 88(198), Union of India vs Madan Gopal (1954), ACR 541(555)
17. *Bharat ka Samvidhan: Ek Parichay*, Durga Das Basu, p.35
18. *Mere Sapno Ka Bharat*, Gandhi, Edition-1960, pp.6-7
19. *Ambedkar's Preamble*, Akash Singh Rathore, Epilogue, p.177
20. *Hamara Samvidhan: Bharat ka Samvidhan aur Samvaidhanik Vidhi*, Dr. Subhash Kashyap, p.75
21. *Bharat ka Samvidhan: Ek Parichay*, Durga Das Basu, p.99
22. *Hamara Samvidhan: Bharat ka Samvidhan aur Samvaidhanik Vidhi*, Dr. Subhash Kashyap, p.124
23. Circulated by the Sarv Sewa Sangh Gram Swarajya Andolan Samiti
24. *Bharat ka Samvidhan: Ek Parichay*, 13th Edition, Brajkishore Sharma, p.154

Understanding the Directive Principles through the Gandhian Lens

Dipankar Shri Gyan

Dr. Vedabhyas Kundu

Mansi Sharma

The Swaraj of Mahatma Gandhi's dream is poor man's swaraj. The threads of his thoughts can easily be traced in the Directive Principles of our Constitution. Let's have a look

I shall strive for a constitution, which will release India from all thraldom and patronage, and give her, if need be, the right to sin, I shall work for an India, in which the poorest shall feel that it is their country in whose making they have an effective voice; an India in which there shall be no high class and low class of people; an India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of untouchability or the curse of intoxicating drinks and drugs. Women will enjoy the same rights as men…. Mahatma Gandhi, (Young India, 10-9-'31)

This vision of Mahatma Gandhi on what the Constitution should contribute underlines the India of his dreams. Further his Talisman gives us a precious prescription on how our policies should be framed keeping in mind the well-being of the masses reaching the last person of the society. His idea of ***poorna swaraj*** or complete independence echoed this guiding post wherein all 'ordinary amenities' of life that a rich person enjoys should also be accessible to poor people. In this context, Bapu writes in Young India, "The Swaraj of my dream is the poor man's Swaraj. The necessaries of life should be enjoyed by you in common with those enjoyed by the princes and the moneyed men. But that does not mean that you should have palaces like theirs. They are not necessary for happiness. You or I would be lost in them. But you ought to get all the ordinary amenities of life that a rich man enjoys. I have not the slightest doubt that Swaraj is not Poorna Swaraj until these amenities are guaranteed to you under it." (*Young India* 26-3-1931)

This perspective of the Mahatma on the need to reach out to the last person of the society having the same ordinary amenities as the rich person has echoes in his conception of Ram Rajya. The Gandhian framework of Ram Rajya can be described as 'the land of dharma and a realm of peace, harmony and happiness for young and old, high and low, all creatures and the earth itself, in recognition of a shared universal consciousness.'

Here one is reminded of a couplet

from Tulsidas and his description of what is Ram Rajya:

Baranāśrama nija nija dharama nirata beda patha loga|
Chalat sadā pāvahin sukhahi nahi bhaya soka na roga||

The essence of Ram Rajya according to this couplet is when there is no fear, no sorrows and no diseases and everyone tries to live according to the dharma or their ashram. It is also when everyone is doing what they are supposed to do in their work. Goyal explains the essence of this couplet as, "What we need to have a state that is perfect and to be honest how simple it sounds to achieve. Just do what you are supposed to do to the best of your abilities or as prescribed. Think of it, if we all did what we are supposed to do, 99 percent of the world's problems would be gone in an instant."

In the backdrop of ideas of a welfare state which has echoes of Gandhi's talisman, his idea of *poorna swaraj* and *Ram Rajya*, it would be worthwhile to explore the Directive Principles of State Policy from the Gandhian lens. This chapter will be an attempt to construct on how the Gandhian prescriptions have echoes in the Directive Principles.

Importance of the Directive Principles

The Constitution of India is not only regarded as one of the longest constitutions of the world but also as a more comprehensive one. It encompasses provisions almost for every thinkable situation and aspect in the lives of people coming from all strata of the society moving ahead with their roots of caste, creed, religion or culture. It provides either direct law or provisions leading to the enactment of laws which range from definition of State under Article 12 to Citizenship, Fundamental Rights, Directive Principles of State Policy, Fundamental Duties, President, Vice-President, Judiciary, and Parliament and so on. All these have found place in the Constitution as a result of positive influences of the constitutions of the different countries as well as great personalities such as Mahatma Gandhi.

The Chapter IV of the Indian Constitution from Articles 36 to 51 deal with Directive Principles of State Policy. The Directive Principles are the principles which act as a guide for the State in the process of framing of laws and policy making. Kundu and Sharma (2022) point out, "Though citizens have been deprived of recourse to Courts for their enforcement by making them non-justiciable, yet these have been recognized as fundamental in the governance of the State through a catena of orders/judgments by the Supreme Court of India.

For instance in the Maharao Sahib Sri Bhim Singhji vs the Union of India and Othrs on July 1, 1985, the Supreme Court noted, "The Directive Principles are not mere homilies. Though these Directives are not

cognizable by the Courts and if the Government of the day fails to carry out these objects no Court can make the Government ensure them, yet these principles have been declared to be fundamental to the governance of the country." The Apex Court has gone to the extent of holding that the Directive Principles may have precedence over even the Fundamental Rights when the national interest so warrants. It is perhaps the demand of the present scenario in which the State is moving towards being a Welfare State. India is no exception to this. Consequently, the framers of the Constitution have been wise enough to develop India into a 'Welfare State' through constitutional provisions pertaining to the establishment of a political democracy with provisions of social and economic justice and minimizing inequalities in income, status, facilities and opportunities.

Meanwhile, debating on the importance of the Directive Principles in the Constituent Assembly, Dr. B. R. Ambedkar stated on November 19, 1948 that these principles should be the basis of the future governance of the country "It is the intention of this assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country."

Further during the discussion in the Constituent Assembly, Ammu Swaminathan underscored, "I feel that the Constitution actually rests on two pillars - Fundamental Rights and the Directive Principles of State Policy."

In the backdrop of the important role which have been assigned to the Directive Principles, it would be critical to look at some of the articles which form part of these Principles through the Gandhian lens. Mahatma Gandhi had envisioned for independent India a polity that would be based on the principles of democratic self-government or self-rule. Swaraj, Sarvodaya and Swavlamban can be said to be the basic principles of Gandhian thought

Similarly, Alladi Kreishnaswami Ayyar, talking on the important characteristics of the Constitution in the Constituent Assembly in November 1949, spoke on the Directive Principles of State Policy. He said, "Having regard to the wide nature of the subjects dealt with in these articles and the obvious difficulty in making the subjects dealt with by these articles justiciable, they have been classed as directive principles of State policy. The principles of Social policy have their basis in the preamble to the Constitution and the Objectives Resolution. Article 87 in express terms lays down that the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. No ministry responsible to the people can afford lightheartedly to ignore the provisions in Part IV of the Constitution."

Directive Principles of the State Policy through the Gandhian lens

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For instance, Article 38 (2) echoes the Gandhian economic principles of equality. It says, "The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." Mahatma Gandhi throughout his life advocated a nonviolent economic order and underlined the importance of trusteeship. On the importance of equalization of status, he stressed, "I want to bring about an equalization of status. The working classes have all these centuries been isolated and relegated to a lower status. They have been shudras, and the word has been interpreted to mean an inferior status. I want to allow no differentiation between the son of a weaver, of an agriculturist and of a schoolmaster." (*Harijan*, 15-1-1938)

Gandhi was clear when he said there can be no Ram Rajya unless there was an end to inequalities. He pointed out, "Today there is gross economic inequality. The basis of socialism is economic equality. There can be no Ram Rajya in the present state of iniquitous inequalities in which a few roll in riches and the masses do not get even enough to eat." (*Harijan* 1-6-1947)

The ideas of economic equality and the essence of equal distribution have found credence in numerous writings and speeches of Bapu. This was his framework of a nonviolent economy. In an expansive note, Mahatma Gandhi had pointed out in his Constructive Work, "Economic equality is the master key to non-violent independence. Working for economic equality means abolishing the eternal conflict between capital and labor. It means the leveling down of the few rich in whose hands is concentrated the bulk of the nation's wealth on the other hand, and a leveling up of the semi-starved naked millions on the other. A non–violent system of government is clearly an impossibility so long as the wide gulf between the rich and the hungry millions persists. The contrast between the palaces of New Delhi and the miserable hovels of the poor, laboring class cannot last one day in a free India in which the poor will enjoy the same power as the richest in the land."

This expansive vision of a nonviolent economy has echoes in Article 39 which says: The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; d) that there is equal pay for equal work for both men and women.

In 1940, writing in the *Harijan*, the Mahatma talked at length on the significance of equal distribution of wealth. He wrote, "The real implication of equal distribution is that each man shall have the wherewithal to supply all his natural needs and no more. For example, if one man has a weak digestion and requires only a quarter of a pound of flour for his bread and another needs a pound, both should be in a position to satisfy their wants. To bring this ideal into being the entire social order has got to be reconstructed. A society based on nonviolence cannot nurture any other ideal. We may not perhaps be able to realize the goal, but we must bear it in mind and work unceasingly to reach it. To the same extent as we progress towards our goal we shall find contentment and happiness, and to that extent too shall we have contributed towards the bringing into being of a non-violent society." (*Harijan*, 25-8-1940)

Gandhi here was linking his prescription of a nonviolent economy to his notion of trusteeship. He pointed out that through this doctrine of trusteeship, the rich person is not going to be dispossessed of her/his wealth. Instead, the rich person would use what s/he requires for her/his personal needs and they voluntarily act as a trustee for the remaining amount needed for the society.

Another article which echoes the Gandhian principles is Article 40 which states: The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Kundu and Sharma (2022) talks about how Bapu viewed organization of village panchayats and communities as a tool for development of individual human beings. Time and again, Gandhi had reiterated that India is to be found not in its cities but in its villages. He was in favour of reviving the village communities. His idea of village swaraj was a 'complete republic, independent of his neighbours for its own vital wants and yet interdependent for many others in which dependence is necessary'.

In the Gandhian framework if the villages were to be strengthened and if village swaraj was to be achieved in its truest sense, it was important that the villages needed to be self-sustained in every possible ways. He said, "Thus, every village will be a Republic or Panchayat having full powers. It follows, therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world. It will be trained and prepared to perish in its attempt to defend itself against any onslaught from without. Thus, ultimately, it is the individual who is the unit. This does not exclude dependence on and willing help from neighbours or from the world. It will be free and voluntary play

of mutual forces. Such a society is necessarily highly cultured, in which every man and woman knows what he or she wants and, what is more, knows that no one should want anything that others cannot have with equal labour." (*Harijan*, 28-7- 1946)

Meanwhile Article 43 of the Directive Principles stated: The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

In this context, if we look at the Gandhian framework, Bapu was strongly in favour of promoting cottage industries. Promotion of unbridled mechanization was the principal reason for the destruction of Indian handicrafts, he argued. In his seminal work, Hind Swaraj, he notes, "It is machinery that has impoverished India. It is difficult to measure the harm that Manchester has done to us. It is due to Manchester that Indian handicraft has all but disappeared."

Further in *Harijan*, Gandhi had written, "I would say that if the village perishes India will perish too. India will be no more India. Her own mission in the world will get lost. The revival of the village is possible only when it is no more exploited. Industrialization on a mass scale will necessarily lead to passive or active exploitation of the villagers as the problems of competition and marketing come. Therefore we have to concentrate on the village being self-contained, manufacturing mainly for use. Provided this character of the village industry is maintained, there would be no objection to villagers using even the modern machines and tools that they can make and can afford to use. Only they should not be used as a means of exploitation of others." (*Harijan*, 29-8-1936)

On the revival of villages and village industries and how these needed to be a central aspect of poorna swaraj, responding to a Japanese correspondent who asked the Mahatma on his views on whether he was against the machine age, he replied, "To say that is to caricature my views. I am not against machinery as such, but I am totally opposed to it when it masters us."

When the correspondent asked him if he would not industrialize India, the Mahatma further replied, "I would indeed, in my sense of the term. The village communities should be revived. Indian villages produced and supplied to the Indian towns and cities all their wants. India became impoverished when our cities became foreign markets and began to drain the villages dry by dumping cheap and shoddy goods from foreign lands."' (*Collected Works* 64:118)

Yet another article of the Directive Principles which echoes with the Gandhian framework is Article 45. It states: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. Originally this article provided for free and compulsory education to all children till the age of 6 years. However, it was amended by the 86th Constitutional Amendment Act, 2002 to ensure that provisions of article 21-A which ensures right to education, hold good.

Mahatma Gandhi throughout his life was a great votary of free and compulsory education. His plan was to impart primary education through the medium of village handicrafts like spinning etc. He opined that it would provide a healthy and moral basis of relationship between the city and villages. In *Harijan*, he writes, "I am a firm believer in the principle of free and compulsory Primary Education for India. I also hold that we shall realize this only by teaching the children a useful vocation and utilizing it as a means for cultivating their mental, physical and spiritual faculties. It will check the progressive decay of our villages and lay the foundation of a just social order in which there is no unnatural division between the 'haves' and the 'have-nots' and everybody is assured of a living wage and the rights to freedom." (*Harijan*, 9-10-1937)

Bapu's crusade was to reach out to the unreached and take out the dispossessed out of their thralldom and destitution. He underlined that swaraj had no meaning if the last person of the society was left out of the national mainstream. While his talisman evocatively highlights this spirit, he talked about this aspect in a large number of his writings and speeches. Moreover, as a person of action, all his work among the masses echoed this commitment. For instance in Young India, he wrote, "Swaraj is a meaningless

term, if we desire to keep a fifth of India under perpetual subjection, and deliberately deny to them the fruits of national culture. We are seeking the aid of God in this great purifying movement, but we deny to the most deserving among His creatures the rights of humanity. Inhuman ourselves, we may not plead before the Throne for deliverance from the inhumanity of others." (*Young India*, 25-5-1921)

This deep commitment towards the weaker sections of the society has been delved in Article 46 which states, "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Another article which echoes the Gandhian principles is Article 47. It states: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Mahatma Gandhi throughout his life was an advocate of prohibition and against the use of alcohol and other intoxicating drugs. Prohibition was an important feature of his Constructive Programme. He suggested nonviolent methods to wean men and women away from these evil habits. So strong was his crusade against drinks and drugs, the Mahatma once said, "If I was appointed dictator for one hour for all India, the first thing I would do would be to close without compensation all the liquor shops, and compel factory owners to produce humane conditions for their workmen and open refreshment and recreation rooms where these workmen would get innocent drinks and equally innocent amusements." (*Young India*, 25-6-'31)

Gandhi when he advocated prohibition pointed out how societies were destroyed due to the habits of drinks and drugs of the people. He said, "Nothing but ruin stares a nation in the face that is a prey to the drink habit. History records that empires have been destroyed through that habit. We have it in India that the great community to which Shri Krishna belonged was ruined by that habit. This monstrous evil was undoubtedly one of the contributory factors in the fall of Rome." (*Young India*, 4-4-29)

As the habit of drinks and drugs has serious public health implications and ruins families and societies, the Directive Principles have rightly underlined the need to encourage prohibition.

Cow protection was another important mission of Mahatma Gandhi. He suggested a sustained and constructive effort on the part of the masses to protect the cow and her progeny. Gandhi advocated cooperative cattle farming as an important strategy and felt lack of cooperative efforts as the principal reason for the deteriorating condition of the cattle. Here it would be apt to quote Bapu from Young India where he underlines, "The central fact of Hinduism is cow protection. Cow protection to me is one of the most wonderful phenomena in human evolution. It takes the human being beyond his species. The cow to me means the entire sub-human world. Man through the cow is enjoined to realize his identity with all that lives. Why the cow was selected for apotheosis is obvious to me. The cow was in India the best companion. She was the giver of plenty. Not only did she give milk, but she also made agriculture possible. The cow is a poem of pity. One reads pity in the gentle animal. She is mother to millions of Indian mankind. Protection of the cow means protection of the whole dumb creation of God. The ancient seer, whoever he was, began with the cow. The appeal of the lower order of creation is all the more forcible because it is speechless. Cow protection is the gift of Hinduism to the world. And Hinduism will live so long

Gandhi when he advocated prohibition pointed out how societies were destroyed due to the habits of drinks and drugs of the people. He said, Nothing but ruin stares a nation in the face that is a prey to the drink habit. History records that empires have been destroyed through that habit. We have it in India that the great community to which Shri Krishna belonged was ruined by that habit. This monstrous evil was undoubtedly one of the contributory factors in the fall of Rome

as there are Hindus to protect the cow… Hindus will be judged not by their tilaks, not by the correct chanting of mantras, not by their pilgrimages, not by their most punctilious observances of caste rule but by their ability to protect the cow." (*Young India*, 6-10-1921)

Echoing this spirit of cow protection as envisaged by Gandhi, Article 48 of the Directive Principles states: The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

Conclusion

"To me political power is not an end but one of the means of enabling people to better their condition in every department of life. Political power means capacity to regulate national life through national representatives. If national life becomes so perfect as to become self-regulated, no representation becomes necessary. There is then a State of enlightened anarchy. In such a state everyone is his own ruler. He rules himself in such a manner that he is never a hindrance to his neighbour. In the ideal state, therefore, there is no political power because there is no state. But the ideal is never fully realized in life. Hence the classical statement of Thorean -that government is best which governs the least." (Mahatma Gandhi, Young India, 2-7-31)

This chapter was an exploration to understand the Directive Principles of State Policy through the Gandhian lens. The effort was to look at different articles of the Directive Principles and how these echoed the Gandhian principles. Taking a leaf from the Gandhian framework, the efforts of all governments should be to provide adequate opportunities to all so that people can use these opportunities to manage their conditions better. The Gandhian framework can be a powerful guiding post to policy makers to develop policies that in the real sense reaches to the last person of the society.

References:

1. Goyal, Anuradha. What is Ram Rajya? Let's Listen to Goswami Tulsidas; https://www.anuradhagoyal.com/what-is-ram-rajya-ramcharitmanas-tulsidas/ (retrieved on March 1, 2022)
2. Kundu, Vedabhyas & Sharma Mansi (2022). The Significance of Directive Principles of State Policy from the Gandhian Lens in the Contemporary Times; https://vedabhyas.medium.com/the-significance-of-directive-principles-of-state-policy-from-the-gandhian-lens-in-the-contemporary-c6af6de03a1a; retrieved on April 8, 2022.

Readings

- Andrews, C.F. (1930), *Mahatma Gandhi's Ideas, New York*, Macmillan.
- Bandyopadhyaya, J. (1969). *Social and Political Thought of Gandhi*, Bombay, Allied Publishers.
- Bhattacharya, B. (1969). *Evolution of the Political Philosophy of Gandhi*, Calcutta Book House.
- Bondurant, J. V. (1967). *Conquest of Violence: Gandhian Philosophy of Conflict*, Berkeley, University of California Press.
- Chatterjee, M. (1983). *Gandhi's Religious Thought*, London, Macmillan.
- Dalton, D. (1982). *India's Idea of Freedom*, Gurgaon, Academic Press.
- Gandhi, Mahatma. (1927). An Autobiography: *the Story of My Experiments with Truth*; Navajivan Publishing House.
- Gandhi, Mahatma (1947) *India of My Dreams*; Navajivan Publishing House
- Gandhi, Mahatma (1938). *Hind Swaraj: Or, Indian Home Rule*. Ahmedabad: Navajivan Publishing House.
- Iyer, R. N. (1973). *The Moral and Political Thought of Gandhi*, Bombay, Oxford University Press.
- King, Mary (1999). *Mahatma Gandhi and Martin Luther King Jr: The Power of Nonviolent Action*; UNESCO Publishing, 1999.
- Kumar, Narender. (2012). *Constitutional Law of India, Delhi*, Allahabad Law Agency.
- Pantham, T and Deutsch, K. (1986). *Political Thought in Modern India*, New Delhi, Sage.
- Parekh, B. (1989). *Gandhi's Political Philosophy*, Notre Dame, Notre Dame University Press.
- Tarunabh Khaitan, Directive principles and the expressive accommodation of ideological dissenters, *International Journal of Constitutional Law*, Volume 16, Issue 2, April 2018, Pages 389–420, https://doi.org/10.1093/icon/moy025.
- Woodcock, G. (1971). *Mohandas Gandhi,* New York, Fontana.

Directive Principles and Women Empowerment: An Alternative Narrative

Dr Jyoti Kiran Shukla

Gender equality is not a new thing for our society and also not borrowed from elsewhere in the Directive Principles of State Policy. It is actually a traditional value for us. A realistic study

This article presents an alternative narrative on the issue of Directive Principles and women's inclusion and participation in a welfare state. Dealing with the constraints to women empowerment, it highlights the challenges and gaps in the process in the context of DPSPs. It strongly argues that DPSPs are not merely borrowed concept from the Irish constitution but are originated from the idea of establishing a welfare state, which was evolving from a civilisational society in which gender equality and justice were already accepted norms, originally and traditionally. In that sense the framers appear to be reinventing the traditional principles of *Rajyadharma* based *lokniti (public policy)* for *lok kalyan (public welfare)*. Women in this model of governance are not a subsidiary appendix to the main text but are central to the very process of development policy as equal participants.

However, the gap in theory and implementation is evident. The impact or outcome assessment after 70 years of independence suggests that an in-depth review is needed to realign the policy architecture with the objective function of welfare state as women are still not receiving the development outcomes equally. Inclusion is still a challenge. Digital and technology divide is real. So is economic and social inequality. Thus, Gaps should be identified. Distortions should be captured and processes should be questioned first in the intellectual and academic spaces, then in legislatures about the translation of the spirit of DPSPs into engineering a welfare state where women were envisioned not only as partners in development but were assumed as source of power which is engine of progress- *Nari Shakti*.

Introduction

Research on the functioning of state with respect to its guiding principles is an important aspect for reviewing the relationship of people and governance processes and their constitutional rights. Better if done with a gender lens too. This article is one such initiative.

The discussion on the directive principles presents a conceptual challenge for their precise interpretation without a complete contextual understanding.

A peripheral and usual commentary would conclude that DPSPs were inspired by article 45 of

the Irish constitution where they were referred mainly as Directive Principles of State Policy and largely related to the economic rights of the citizens. Their indigenised version, however, was much wider, holistic and including the cultural social and economic aspects which was attributed to a purposive choice of inclusion of socialist, liberal and Gandhian ideas. Again a popular misconception!

However, a deeper analysis of the genesis of the idea of including directive fundamentals of governance in the Indian Constitution presents an altogether different picture. The intent of the framers of the constitution was not to include some loose, unsecured subordinate and borrowed postulates to direct a welfare state. On the contrary they wanted to provide the concept of superlative principles of Governance or Rajya Dharma. The intent was to provide Directive principles of Governance both for the *Niti nirmata* (policy makers) and implementing agencies. They clearly understood the need for an ideal set of guiding principles to a polity which was being evolved from a civilisational nation. Therefore, the intent was to include the cultural values and ideals which were to be imbibed in governance both through legislation and practices.

It is surprising that this aspect has never been highlighted in academic discourse. Was this for some obvious reasons? I leave this question to you to answer. As while long commentaries have been made on the nature and scope of DPSPs and their projected origin, not much has been written about the cultural inspiration or value system behind them which is authentic Indianness. Not a word about that in contemporary literature, nor any solid discussion about the immense importance the constituent assembly assigned to them!

To support my point let me underline the discussion in the constituent assembly debate on the November 19th 1948. Kazi Syed Karimuddin presented an amendment that in the heading under part IV the word 'directive' be deleted. In support of the amendment, he said, "it would have been much better if the amendment of Mr. Kamath could be taken up along with the amendment that I have moved. The provisions of Directive Principles which have been embodied in Part IV are very important as they relate to uniform civil code and to economic pattern and very many Fundamental matters. Directive Principles mean that they will not be binding on the State; in any case, they would not be enforceable in a court of law. My submission is that, if this Constitution is not laying down these principles for being enforced in a court of law, or if they are not binding on the State, they are meaningless."

He further quotes Dr. Ambedkar, "that these principles should be embodied in the Constitution as Fundamental Rights and that a scheme embodying these principles should be brought into operation within ten years." The time period assigned depicts the intent of the makers to make it progressive and dynamic.

Shri H. V. Kamath presents his amendment in the same debate saying, ***"That in the heading under Part IV for the word 'Directive', the word***

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'Fundamental' be substituted." He gives two reasons for the same, "Firstly, we have been told that Parts III and IV of the Draft Constitution embody certain rights, Part III being justiciable rights and Part IV being non-justiciable rights. But both are looked upon or regarded as rights which are fundamental."

He further obtained support from the report of the Honorable Sardar Patel. Reading from the reports of the committee, Sardar Vallabhbhai Patel report which was presented to the Assembly in August 1947 says, "we have to come to conclusion here," (Here we meant the Advisory Committee on the subject of fundamental rights) "that in addition to the fundamental rights the constitution should include certain directives of State Policy which though not cognizable in any Court of law should be regarded as Fundamental in the Governance of the country." Office booklet which contains report of committee which was headed by Sardar Patel gave the title of these very rights which are now embodied in part IV fundamental principles of governance. This should be a matter of emphasis.

"I should like to know from Dr. Ambedkar draft committee that why they have made a departure from the title given by Sardar Patel to these rights? The committee gave the title of fundamental principles of governance while draft committee has changed the title to Directive Principles of State Policy?" Sh. Kamath says. It surely is an interesting perspective which remains unexplored. At the original level they were conceived and structured like *Rajdharma* as the committee on the fundamental rights intended to institute them as the value- architecture of the principles of Governance.

Dr. B.R. Ambedkar's response further corroborates the above-mentioned views, "It is not the intention in this part to make these principles mere pious declarations. It is the intention of this assembly that in future both the legislature and executive should not merely pay lip service to these principles enacted in this part but they should be made the basis of all executive and legislative actions that may be taken hereafter as in the matter of governance of this country

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In this perspective we find them the ideal objective of the collective will of the nation.

Direction and Sphere

Part IV of the constitution of India (article 36-51) contains DPSPs and as mentioned Article 37 indicates its application. In order to establish India as welfare state they aim at ensuring social and economic justice along with an emphatic cultural context for this civilisational nation which was being reorganised as a modern state too. Unlike the fundamental rights their scope is vast and wide and they seem to be resonating the *Rajya Dharma* to institute the *Lok Kalyan Niti* through legislature or state in the wider context of civilisational state thus they are normative and affirmative. Though not enforceable by law yet they are not subordinate to FRs.

Thus though the popular classification of DPSP go as socialist, Gandhian and liberal yet to my mind they are integrated set of values of governance or *rajya dharma* in the cultural context of our civilisational nation state which the constitution framers re-engineered in the modern context to suit the need of the time.

Women Empowerment-Situational Analysis

If constitution provided equality in social and economic rights then the developmental outcomes should be the same for men and women. It's pertinent to note that the women included in constituent assembly had never advocated gender based reservation for equality. That shows their inherent faith on legislatures to be the transformative instruments for women empowerment. What actually took place is a bit disappointing.

Let us analyse the outcomes of legislation in terms of development benefits in the form of situational analysis. The situation of Indian women post-

independence cannot be called equal looking at the outcomes of legislation, implementation along with the welfare parameters. Let's take a Random walk. As mentioned earlier, all important studies (High level committee report on women in India 2015, also report of Drishti on the status of women 2020 both), and numerous articles have highlighted inequality, discrimination, marginalisation and systematic bias despite affirmative action and intervention by governments.

India is ranking 120 out of 131 countries in female labour force participation which has been my area of interest since early eighties. At about 18% of GDP the economic contribution of Indian women is less than half of the Global contribution, 40% in China. According to a World Bank study India could have boosted economic growth by 1.5 to 9% per year around if women could participate in the labour-force equally. According to an estimate the Indian economy could grow by an additional 60% by 2025, that is adding 2.93 trillion, if women are represented in the formal economy equally. Covid made this inequality and discrimination in availability and participation of work more visible, open and vivid. Post Covid labour force participation went down as low as 16% which was 22% in 20 17-18, 23% in 18-19 and 28.7 percent in 2019-20.

Studying women's station and representation in different fields of public office is even more disappointing. In 17th Lok Sabha 14.92% of the total members are women. Rajya Sabha has only 11.84% women's participation. In the state assemblies it is only 8%. Despite the key positions like the overall women representation in the central councils of ministers has decreased from 13.8% 2015 to 10.5% in 2019. Women are not represented properly in Judiciary too. It is questionable whether only representation would ensure equality and is significant and meaningful, because my experience in the panchayats makes it clear that even when the representation was reserved for women, *sarpanchpatis* (husband of women sarpanch) basically ran the offices. However, this is a more fundamental debate that how can representation alone solve the problem of discrimination and inequality? Yet, there is ample evidence to suggest that if the representation is combined with capacity building and sustainability, the quality of outcome is much better when it comes to sharing the outcomes of development. So according to the DPSPs the capacity building and sustainability should have been the primary goals for mainstreaming gender. Was a gender audit done before each policy? The answer is evident.

Crime against women is a very serious issue. The total number of cases of crime against women registered during the year 2019 and 2020 is 405326 and 371503 respectively. Covid has resulted in increasing cases of domestic violence. Though, it is beyond the scope of this article to further elaborate on situation analysis but crime against women increased in most of the states. Entrepreneurship leads to economic empowerment. MSMEs are extremely important in Indian economy. But out of the total registered 6946895 MSMEs in India, only 119989 are being run by women.

So, when it comes to the outcome of development, technology, growth and prosperity women unfortunately are still at the lower end of the pyramid. Principles of governance are aiming at framing legislation to incorporate gender equality and non-discrimination then why the results of the desired outcome are contrary? Is there any gap between the spirit of the guiding principles of constitution on social and economic rights and actual implementation or it is just an implementation issue. This is a complex question, which requires wider analysis and had been skillfully avoided in the contemporary intellectual discourse. Through this article I want to flag this issue also that in a civilisational nation where women traditionally had equal position and rights in Upanishadic and Vedic Times and enjoyed respectable position in religious and social spheres before the foreign invasions and the dark period (in Indian context), how this very society relegated them to the role of a second-grade citizen, should be a subject of historical exploration. How *shakti* (power) got converted into poverty and suppression should be explored. The dislocation was not natural to the Hindu society and was imposed by historical factors. What were these forces and how exactly did this happen should be a matter of concern and objective analysis. Much is to be explored that how these developments became structural in society and how on these structural specifics guided the entire western narrative of the unequal Hindu/ bhartiya society!

A narrative which is actually a distorted version of reality. This is beyond the scope of this article yet I wish to raise this issue for future discussion. My view is, the constitution framers recognised the equal status of women in Bharat (culturally) and accordingly prepared a blue print of equal participation at all levels of polity and economy. Yet they were aware of the discrimination and inequality which exists thus the focus was to take corrective action too which reflects in the DPSPs. There are some troubling facts here and which need a meaningful debate in the academic discourse for example the notion of inherent discrimination against women in our civilisation, a popular concept portrayed and sold by the western academics and historian is far from facts and reality and needs serious enquiry.

The point that I want to make here is the inspiration behind equality of genders in constitution was more from the civilisational reasons rather than contemporary treatment given to the subject in the west around that time. This is the reason that the Directive principles go wider than its Irish counterpart to include social and cultural spheres and also in emphasis and in their nature which was conceived as mandatory. Certainly, the reason is the cultural values of our civilisational nation which assumed equality of *Ātman/ Jīva* women and men as complementary /equals as Shakti and Shiva. And also assume an inherent balance in these two energies and dharma to guide the *niti* of this synchronised energy for Kalyana. Thus an alternative narrative does exist for inclusion of DPSPs and inherent gender equality in our constitution.

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Women, Inequality and DPSPs

As described in the earlier paragraphs the gender-based inequality might be a distortion from the ideal societal environment which ancient India had but in today's society it is real. The data presented in the earlier paragraphs depict that woman are not equal beneficiaries in the welfare state. A few years back even sex ratio was a matter of concern .Despite their productive and reproductive roles, they are yet to participate their full potential in the development process and receive equal benefits of the welfare state.

Thus, guiding principles of legislation and governance become more important. Apparently only article 39 and 42 seem to be directly covering women's issues yet to my mind many other provisions of DPSPs have either direct or indirect implications on women's equality, wellbeing and development.

For example, a large proportion of women are dependent on agriculture thus article 48 relating to agriculture and animal husbandry in a scientific way and corresponding land reforms and co-operative farming do impact women's gainful activities and thus welfare. Should we thus not define women's work differently to remove enumeration bias? These are the bigger questions which should direct policy. Likewise, article 45 relating to right to education ensures better enrollment of girls and thus promotion of women education as an important variable determining their capacity to earn and economic empowerment. Studies indicate that environmental degradation impacts women's wellbeing to a larger extent world over. Thus, article relating to environmental protection do ensure women's economic empowerment indirectly. MGNREGA 2006 despite all its implementation challenges and distortion, which to a great extent are sorted by the current Modi government, by several reforms have secured the gainful employment in distressed situation for women too. Of course, equal pay for equal work, Maternity Benefit Act is directly benefiting women. Yet we feel that if the DPSPs are implemented in holistic way they would benefit women more than men as market forces and uncertainties in a globalised world affect women more sharply and yet a protective mechanism is needed. A simple yet glaring example is recent pandemic.

Covid impacted humankind, yet worst impact is on women's nutrition, employment, domestic violence and increased domestic and unpaid work. Half the planet regressed 20 years back! The DPSPs have to be the guiding norms for an inclusive recovery and for fulfilling the aims of SDGs too. Therefore, if socioeconomic gender justice has to be the Rajya Dharma a whole hearted effort is needed to imbibe the spirit of DPSPs in legislative, execution and sustainability of the entire process. Again it's much more needed now in the renewed context of recovery and SDGs

Some remarkable achievements when state acted as truly Welfare State with a cultural understanding.

All governments govern for public welfare yet we see a paradigm shift in approach towards women's development in Modi government. For the first time a clear departure from right based feminist- oriented approach to culture centric *matrushakti* approach is seen. Key policies of the central government seem to be working in tandem with DPSPs but with a more women centric approach. PM Modi has often spoken about women led development. And policies have translated his vision into reality. Some examples to quote: *Beti bachao beti padhao* movement which changed the sex ratios as 1020 females per 1000 males in such short span of time. 'Toilet to each home', benefit women primarily. Ujjwala Yojna is not only a bold step towards clean energy but helps women for health, economic activity and general well-being.

Matru Vandana to Stand-Up India are women-oriented schemes which translate the spirit of DPSPs to schemes and policies for equality and economic rights and protection of marginalized and vulnerable. The latest example is allocation of Rs. 60,000 crores to water security and water to each home in the recent budget. Time disposition Studies indicate that women spend 20 of their productive time in collecting water for domestic use. Thus, this allocation would directly help women to secure more time for productive work and reduce their burden. Also integrated schemes like Shakti, Poshan, Vatsalya, as umbrella portals for as integrated approach and eleven percent increase in gender budget are some exceptional achievements.

Challenges and scope for meaningful initiatives

Despite the Guiding principles, affirmative legislation and implementation, according to a recent Pew Research Survey, India stays conservative on gender roles. According to the survey, when there is job scarcity men should be given preference in providing employment though most agree that women should be given same rights. 40 percent of the population still thinks man should be the bread winner and women should look after home and children and about 87 percent feel a wife should obey her husband. So, basic premise of equality within family and society is still a challenge. Attitudinal shifts are necessary and only legislation will never bring change. Prejudice and attitudes work against women in most life situations despite acknowledgement of equal rights and rhetoric. Thus, it's important that renewed emphasis on directive principles is initiated through the discussion and debate in the intellectual, academic, think tanks and civil society spaces. That should later act as inputs for government legislation and policy formation. This will help a better brainstorming and dialogue on contentious issues and help build consensus and ownership for societal change. Some specific areas which could be good points to start with are the following.

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Women and Technology

Technology and productivity go hand in hand and so does employability. Women's access to technology is poor and unequal, especially in rural economy. So is digital divide, an issue of major concern in times where economy is transforming into digital. Equal pay for equal work could be implemented meaningfully only when equal access to technology

and digital access exists which assures equal opportunities to work. Thus, this is one area which needs immediate attention as to how future inequality could be avoided and existing could be addressed? Digital equality for equality of earning is a pre condition.

Women and Work

Lower women labour force participation, which is further declining, should be the biggest concern of the policymakers. Some time back NCW had initiated some regional studies in this regard. We are though yet to see significant measures in that direction. In my view declining LFP rates are reversing the progress that we made in attaining gender equality in past several years thus if the DPSPs are to be guiding principles of state then immediate steps, either through legislation or policy, are needed to seize and reverse the trend. Unless economic empowerment is ensured, equality could never be achieved. A holistic assessment of all structural reforms, including agricultural, labour, financial, digital, should be done through the gender lens before policy formulation.

Land Rights and Rural Economy

Secure land rights for women have depicted increased agricultural productivity, food security and resilience in women farmers. Despite constitutional equality customs and traditions have constrained equality in inheritance. Hindu Succession Act amendment has expanded the scope of women's land and property rights. Despite several reforms under the land grant programs and successive reduction in stamp duties etc., the situation in agricultural land ownership remains inequitable. In India about one third of women are cultivators but they own around 11 percent of the land, operating 13 percent of holdings while 75 percent of female work force depend on agriculture. Thus, a meaningful dialogue and action towards equitable land rights is to be promoted without disturbing social fabric.

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Feminism in Familist Society, Attitude towards Annapurna

I often say I am not a feminist. I am a familist. Yet I promote endogenous feminist view which is based on the cultural concept of Shakti and Shiva. We need to recognise that power dynamics in our families is not women centric any more, thus a reorientation is needed. Suffocating under the dual burden of household and professional work, women truly need solid family support for child care, domestic work and care responsibilities. Thus altered gender roles should be made a reality in families and household. First and foremost, equality starts at primary unit of our society which is family, which is not a physical unit but an emotional entity too.

Thus, right from state to society, we need efforts to give respect to Annapurna of the family which she deserves. I am not for the idea of paying for the House hold work which is the central idea of feminist literature on household. But I feel all the state support should be mandatory to reduce the dual burden of work and supporting benefits and right from flexible working hours to childcare support provision to better social security to pensions and women friendly technology for house work. I have mentioned Ujjawala and Har Ghar Nal as examples in this direction of women led development. Yet much more is to be done for bringing attitudinal change through curriculum change, civil society efforts, media and religious organisations and social organisation. Impact of dark age which created disrespect and discrimination towards women is going to take long, sustained and determined effort if it is to be reversed. If equality, justice and welfare were the inherent objective of DPSPs as rajya dharma then state, society and family, all units of our civilisational nation must make holistic and integrated efforts to mainstream, include and engage with Nari Shakti for transforming India. Only then the goal of women – led development can become a reality.

Free Legal Aid From a Directive Principle to State Action

Dr. Rajendra Kumar Pandey

Founding fathers of our Constitution had envisioned the need of legal aid to all those who seek it, but it could not find place in the original scheme of Indian Constitution. Provisions had been made later for the deprived to an access to it. An analytical study

As a nation rooted in long traditions of democracy and rule of law, India has always been characterised by prevalence of such norms and practices that facilitated easy and free access to justice for common people. It is therefore not surprising that when the constitution of India was being framed, it was one of the pious dreams of the founding fathers that subtle, if not overbearing, provisions are made to ensure that common people with little or no economic means are not left out of the institutions and processes aimed at securing a happy and dignified life for them. Accordingly, while civil and political rights, whose guarantee do not entail much social and economic cost on state, have been made fundamental rights, the social and economic rights, requiring serious efforts and heavy investment from state, are placed as directive principles of state policy to afford some time for Indian state to generate social awakening and economic resources to turn them into reality. Though free legal aid, per se, could not find mention in the original scheme of the constitution, there have indeed been a number of articles which indirectly make it duty of state to secure equal justice and free legal aid for its citizens.

That way, to begin with, the goal of equal justice and free legal aid was sought to be materialised through the provisions on right to equality and right to life, among others. But the clamour for ordaining the ideal of equal justice and free legal aid a distinct constitutional space has always been there which eventually fructified in 1976 in the form of Article 39-A of the constitution. Now when one glances at the trajectory of free legal aid in India, it becomes quite reassuring to find that substantial efforts are being made to transform the constitutional mandate into policy framework of governments so that access to justice is not denied to anyone for lack of sufficient means. Though access to justice is a complex and cumbersome process, what has been tried to achieve is creation of a mechanism through which each and every person can seek and get justice irrespective of her or his social and economic conditions. An attempt has been made in this paper to critically analyse the status of free legal aid in India from being a directive principle of state policy to becoming part of state action.

Constitutional vision

Despite being considered as underlying feature of liberal constitutional democracies and founding fathers' profound faith in

such norms, provision for equal justice and free legal aid could not find place in the original scheme of Indian constitution presumably for two interrelate reasons. First, conceptually, since legal aid is considered as a functional aspect of constitutional democracy, the framers probably thought it better to leave the subject for the later lawmakers to evolve appropriate enabling instrument for that. Second, like many other social and economic rights, a specific provision for such a right would have entailed heavy economic and administrative burden on the state. Even inclusion of this subject in the chapter on directive principles of state would have morally made it necessary for state to visualise certain short term or long term measures for materialising such a directive. What could thus have naturally been the preferred choice before the founding fathers to was to desist from making specific provision with regard to legal aid and leave it to be impliedly interpreted as inalienable part of those provisions of the constitution which seek to secure an equal, free and dignified life for all citizens of India irrespective of their social and economic conditions.

Even before the insertion of specific provision on legal aid as part of directive principles of state policy, there existed three distinct statutory and constitutional provisions that implicitly required state to make provision for legal aid in certain cases. That way, one of the earliest references to provision for legal aid may be traced to Section 304 of Code of Criminal Procedure which empowers the courts to appoint a pleader for a person before the Court of session if they are convinced that the accused is not represented by a pleader or s/he does not have sufficient means to engage a pleader.[1] Next, certain articles in the chapter on fundamental rights also have inferential markers for legal aid. For instance, Article 14 makes it incumbent upon state to secure for its citizens equality before law which means if any person feels unequal in terms of having a pleader in a court, state might be required to provide such assistance to the person.[2] Likewise, under Article 21, protection of life and personal liberty essentially involves provision for legal aid in case a person fears for loss of his life or personal liberty but does not have sufficient means to protect them.[3]

The subtle constitutional provisions in fact led to debates in the legal circle on imperatives of securing free legal aid to citizens of India. The pioneering argument in this regard was put forward by Justice P. N. Bhagwati who asserted that while adversary system could be retained, judges must be granted greater participatory role in trial of cases so as to make sure that if they find fit, free legal assistance to could be arranged for an accused in order to put him or her on equal footing with the rich in administration of justice. This assertion was carried forward by Justice V. R. Krishna Iyer in his momentous report titled *Processional Justice to Poor*. In this report, Justice Iyer argued that free legal aid to poor and helpless people is a marker of societies based on rule of law and therefore such a right should

be secured for all irrespective of the social and economic costs it entails.[4]

Nonetheless, finding such implicit provisions for legal aid insufficient to secure a secured life for its citizens, the Parliament enacted the constitution forty-second amendment act to insert Article 39-A as a directive principle of state policy in the constitution to secure equal justice and free legal aid to all in the country. The article specifically states that 'the state shall secure that the operation of legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.'[5] This insertion of an explicit article in the constitution for equal justice and free legal aid is thus the reinforcement of an ideal which underpinned the liberal democratic politico-legal system of India but could not find favour with the constitution makers due to the circumstantial imperatives rooted in the relative social and economic backwardness of the country. With the specific constitutional provision now in place, India has well emerged as one of the most vibrant liberal democracies fortified with sound legal and constitutional hedges.

The linguistic construction of Article 39-A, in fact, presents the broader philosophy and operational mechanism underpinning the concept of legal aid. Theoretically, the idea of legal aid is premised within the broader framework of right to equality of opportunity as recourse to legal remedies is a basic service which is usually availed following a defined process and taking paid service of a trained counsel. Given that access to such a service requires both skill and economic means, it is ordinarily not possible for everybody to be adequately skilled and having sufficient money to avail the service. As such a situation is likely to introduce certain degree of inequality among different parties in a case, that would, in the larger context, be violation of right to equality before law thereby undermining the foundational tenet of equality and fairness in a country's political and legal system. The avoidance of such a situation therefore requires state to stand with the facility of legal aid for the ones unable to take paid services of a counsel on their own. So, the article mandates governments in India to enact enabling legislation on the issue and put in place a vibrant system of legal aid at different levels.

Contemporaneously, India can, at least in theory, boast of having one of the most comprehensive and sound framework of legal aid for its people. While the original constitutional vision on the subject has implicitly been ordained in the articles dealing with rights such as right to equality before law, equal protection of law, equality of opportunity, and right to life, the clouds over the visibility of this issue was cleared completely with the insertion of a distinct provision in the constitution. Though the placement of the enabling article for legal aid in the chapter on directive principles of state policy had raised certain eyebrows regarding the political will of the government to materialise that ideal on ground, different kinds of legislative, executive and judicial actions for securing free legal aid to Indian citizens has indeed proved the sceptics wrong. Untiring efforts have indeed been mounted by all the stakeholders for materialising the ideal of free legal aid to all the needy and helpless, and the positive impact of these labours are quite apparent in the form of legal aid societies and legal functionaries making their services available to all the people suffering from economic or other disabilities.

Judicial Perseverance

Not with standing the constitutional mandate for creation of comprehensive framework for legal aid, executive did not seem to be very forthcoming on evolving enabling legislative and administrative mechanisms for quite a long period of time. In these circumstances, the onus of responsibility for reiterating the value of legal aid and constantly prodding states to take the constitutional directive on legal aid seriously ostensibly fell on the judiciary. Like in many other cases, the Indian Supreme Court did not disappoint the poor and needy people on this subject as well, and illustrious judges like Justices V. R. Krishna Aiyar and P. N. Bhagawati did not hesitate in passing orders for free legal aid to hapless accused or litigants inferring such a mandate from different articles on fundamental rights. For instance, in one of the earliest cases on the matter, *M. H. Hoskot v. State of Maharashtra*, the Supreme Court held that right to free legal aid is part of the broader scheme of fundamental rights and state cannot run

away from discharging this responsibility.[6]

A clear enunciation of free legal aid as an indisputable part of procedural justice was made by the Supreme Court in the case of *Hussainara Khatoon v. State of Bihar* way back in 1979.[7] In this case, the impecunious condition of the accused didn't permit them to hire lawyers to plead their cases, resulting in unwarranted delay in pronouncement of judgement by the trial court. Left in state of suspended animation, the undertrials spent a much longer period of time in prison without trial than the quantum of estimated punishment envisaged under the relevant provisions of the law they were charged with. In other words, the quantum of punishment for them would have been less than the time they had already spent in jail, had their case been pleaded diligently by a lawyer and judgement had been delivered within reasonable time. Taking serious view of such a state of affairs of working of judicial system in the country, the Supreme Court held that the provisions of Article 39-A must be read in conjunction with the right to life guaranteed under Article 21 of the constitution thereby making the right to free legal aid a part of inviolable fundamental rights whose infringement would attract attention of courts.

The operational dynamism of free legal aid was delineated by the Supreme Court in the landmark case of *Khatri v. State of Bihar* in 1981.[8] Sensing a tendency on part of governments to desist from providing free legal aid to accused on the basis of flimsy grounds, the Court invalidated all such arguments and held that canons of just and fair judicial procedures are wounded in the absence of legal aid to an accused. It therefore becomes a constitutional responsibility of governments to ensure free legal aid to an accused unable to hire services of a lawyer on his or her own expenses. It strongly opined that free legal aid is a constitutional right of all citizens of India and state cannot run away from securing the same on the ground of financial or administrative constraints. It further held that free legal services need to be provided to an accused at all the stages of hearing. The Court also cast a duty on judicial officers including magistrates and judges to discern the situations in which an accused is unable to hire an advocate for reasons of being unaware of right to free legal aid or indigence, and inform him or her on availability of such legal aid.

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The chore of making the constitutional provisions on free legal aid a prime objective of legal literacy in the country was taken up by the Supreme Court in its insightful judgment in *Suk Das v. Union Territory of Arunachal Pradesh*.[9] Taking a broader view of the level of literacy in India alongside the prevailing social and economic conditions particularly in the countryside, the Court observed that for most of benighted and forlorn people, it would be too much to expect from them that they would be aware of their constitutional rights in general in typical rights such as right to free legal aid in particular. Even if some of them have inkling that they can have some sort of legal assistance from state in the course of court proceedings, they are likely to give up due to their unawareness of the processes and agencies through which such assistance could have been availed. In these circumstances, the Court held, what can prove to be game changer are vigorous efforts for legal literacy with particular focus on making people aware of their rights as well as processes through which they can be availed or protected. With this case, thus, right to free legal aid became a matter of general public awareness so that right to just and fair trial is not denied to any citizen of India.

The ambit of free legal aid was further expanded and reasonably adjusted with certain other somewhat awkward and burdensome procedures of courts through sympathetic and thoughtful observations of the Supreme Court in the case of *State of Haryana v. Darshana Devi*.[10] Contextualising its judgement, the Court lamented that governments were quite often

found not showing due diligence in following the precepts of rule of law only but also giving practical shape to provisions of laws enacted from time to time. In this particular case, chiding the state of Haryana for illogical assertion on observance of certain court procedures regarding fee, the Court famously held that 'the poor shall not be priced out of the justice market by insistence on court fee and refusal to apply the exemptive provisions of Code of Civil Procedure.'[11] The Court also came heavily on other state governments for not doing enough through legislative or executive measures to give effect to the provisions of Article 39-A of the constitution despite many years of their stipulation by Parliament. The judgment in this case acted as stimulant for many governments to initiate steps for implementation of the right to equal justice and free legal aid to all with particular focus on illiterate and indigent people.

State Action

Concerted state action on actualising the constitutional provisions on equal justice and free legal aid can indisputably be attributed to sustained judicial perseverance over a period of time. As in many other matters, lack of political will has probably been the most significant factor for lack of any initiative on part of governments to make sincere efforts for legislative or executive actions to realise of objective of equal justice and free legal aid. Interestingly, in the absence of political will, economic and administrative constraints can well be fabricated to mount an ostensible argument against even the most plausible cause. Thus for a long period of time, only lip service seems to have been provided for the cause of equal justice and free legal aid by the state. Though the issue of legal aid was taken up since as early as 1952 in conferences of law ministers and law commissions, concrete measures in this regard could be initiated only during 1960s in the form of legal aid schemes which were sought to be implemented through legal aid boards, societies or law departments in different states. Later, an expert committee was set up to suggest ways and means for effective implementation of legal aid schemes whose report came under scathing critique of legal luminaries for the way it envisaged legal aid to poor and needy.[12] In the meantime, repeated reprove and rebuttal, by the Supreme Court, of flimsier grounds presented by governments to abstain from fulfilling their constitutional obligation for equal justice and free legal aid eventually became overbearing for the latter to give up their inertia and contemplate evolving suitable legislative and executive framework for implementing the provisions on equal justice and free legal aid.

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Expectedly, the first step in this direction was taken by the central government through bringing about legislation on the matter in 1987. The enactment of Legal Services Authorities Act, 1987 by Parliament is arguably the most formidable step towards giving practical shape to the relevant provisions of the constitution pertaining to equal justice and free legal, particularly envisaged under Article 39-A. As the framework legislation assumed to become lighthouse for state governments to draft, more or less, similar, if not identical, law keeping in view their peculiar circumstances, the Act consists of indicative provisions relating to authorities or bodies to be constituted for providing free legal aid to select category of people specified in this legislation in detail with reference to their social, economic, physical, mental and unwarranted circumstances. Apart from making definite provisions for creation of comprehensive and specialised legal aid bodies at the central level, the Act affords sufficient leg space to state governments to do so. Admittedly, taking a broader view of the concept of free legal aid, the Act, in fact, charts out the nuances underpinning the Indian judicial system and how the legal aid bodies would work to help the eligible people. The Act is therefore a path breaking piece of legislation aimed at providing

a solid base to realisation of the constitutional vision on free legal aid.

Taking clue from the parliamentary enactment, state governments also enacted enabling legislations to supplement the efforts of the central government to create comprehensive and multilayered machinery for free legal aid. Contemporaneously, National Legal Services Authority (NALSA) stands at the apex of the hierarchy of legal aid bodies created at different levels of government. Working under the executive charge of a sitting judge of the Supreme Court, NALSA is vested with the responsibility of not only framing the broader principles and policies aimed at securing legal services envisaged under the provisions of the Act but also devising creative mechanisms and schemes for affording valuable and inexpensive legal support to needy and eligible persons. It also has the onerous responsibility of overseeing the working of State Legal Services Authority so as to ensure that not only the national policies with regard to free legal aid are implemented effectively, the state body also acts as springboard of implementing constitutional and statutory vision on equal justice and free legal aid to people of particular state. That way, NALSA has to discharge both policy making as well as executive functions in respect of implementation of provisions of the central legislation.

The subnational legal services authorities are constituted on the pattern of administrative units within a state. Accordingly, every state now has State Legal Services Authority under the headship of Chief Justice of the concerned High Court. The authority has the jurisdiction of not only ensuring compliance with the policies and guidelines issued by NALSA but also monitoring the working of legal services authorities at district and sub-district levels, and regular and effective organisation of Lok Adalats in concerned state. The State Legal Services Authorities are ably supported by District Legal Services authorities in providing legal aid to poor and needy people. Constituted in each district under chairmanship of District Judge of concerned districts, these authorities indeed act as the cutting edge level at which large number of people are provided legal aid. In many of the states, legal services authorities are constituted at Taluka or Mandal levels as well in order to carry the legal support to as nearer to people as possible. These authorities usually organise Lok Adalats and undertake other legal support services including awareness drives. There now thus exists a hierarchy of legal services authorities at different levels and are organically linked with each other in order to have common legal aid policies, programmes and schemes, apart from learning from good practices of each other.

In addition to the legal services authorities, the Supreme Court has come up with its own in-house mechanism in the form of Supreme Court Legal Services Committee (SCLSC) to offer free legal aid to needy and deserving people. This committee is a unique arrangement to empanel a band of legal luminaries and Advocates on Records whose services can be availed in the hearing of rare cases involving vital issues of law or constitution though the parties to such cases are not in a position to pursue the matter in the apex court. The SCLSC is in fact designed to further the cause of NALSA by taking up the deserving cases in the Supreme Court. Otherwise NALSA remains the epitome of free legal aid whose delivery it needs to ensure in all parts of the country. For that, it has drafted the National Legal Service Authority (Free and Competent Legal Service) Regulations, 2010. Nevertheless, much of the free legal aid in India has currently been provided through the mechanism of Lok Adalats held at different levels and at regular intervals across the country.

Issues and Challenges

The creation of comprehensive machinery in the form of legal services authorities at different levels for providing various kinds of free legal aid to deprived and economically weaker persons has undeniably gone a long way in fulfilling a cherished obligation envisaged under Article 39-A of the constitution. But when it comes to look at reality of free legal aid in the country, the situation does not seem to be as rosy as promised to be at the time of enactment of the Legal Services Authorities Act in 1987. A large number of people can still be seen around for whom an encounter with law would unavoidably result into prolonged incarceration and other difficulties without any legal aid available forthwith. While reasons for such an unwarranted situation can in part be explained with reference to the social and economic conditions prevailing in the country, much of the blame also goes to the

agencies and people charged with the responsibility for making free legal aid a reality for all in India.[13] For, social inequalities and economic deprivations are speaking realities of India and what is therefore required on part of legal services authorities is to factor these conditions in devising ways and means to secure people's right to free legal aid.

A major bottleneck in securing free legal aid to large mass of people in India lies in their unawareness with the constitutional and statutory provisions on the subject. Amidst the rigid social structure and relative economic backwardness, lack of universal literacy adds to the woes of people caught in the vortex of judicial procrastination.[14] For a good number of people without sufficient knowledge of legal procedures and economic means, getting entangled in any legal proceeding invariably results into remaining helpless and bearing the brunt of inhuman practices embedded in structures and processes of law enforcement agencies. Recognizing such a state of affairs, though the Supreme Court has cast it a duty on the judicial officers in its judgment in *Khatri v. State of Bihar*[15] to inform an accused of state responsibility to provide him or her free legal aid in case of s/he is unable to do so, what has usually been seen is non-performance of this duty by such officers. What is therefore needed is a vigorous campaign for legal literacy to make people aware of their constitutional and statutory rights and duties as a citizen of this country.

It is quite often seen that certain kinds of institutional arrangements or service provisions for some people remain dysfunctional or unutilised for reasons of procedural intricacies or lack of knowledge on part of intended beneficiaries the ways to approach the institutions or avail their services. This kind of situation can also be detected in case of institutions and processes for availing free legal aid to a large extent. For instance, lack of publicity with regard to free legal aid and institutional arrangement for the same does not permit majority of people to know about them. But even in cases where people come to know of such a service and institutions for providing it, sheer scale of procedural intricacies deter people to come to these institutions and ask for their services.[16] Though the procedure for approaching legal aid bodies has been simplified and made as easy as writing a simple application or giving oral description of a case, absence of knowledge of such simple steps has usually made people believe these services to be out of their bounds. To overcome such challenges, active and willing support and assistance of legal volunteers may be enlisted to make people in need of free legal aid at ease and come to legal aid forums without any hitch.

What has acted as a powerful deterrent against people availing free legal aid has been the quality of services rendered in the name of such assistance.[17] It is general assumption that only incompetent or inexperienced lawyers are usually engaged to provide free legal aid as they are easy and inexpensive to hire. Many times the consul engaged to pursue the case of a beneficiary of free legal aid tends to betray his or her client and turn into predator in place of benefactor of the distressed person. On occasions, undue pecuniary allurements also act as persuader for free legal consul fighting the case of an accused to lower his or her guard and weaken the case of his or her own client. Though such eventualities have been tried to be warded off by the Supreme Court through stipulation of certain guidelines in engaging only competent and Advocates on Records through SCLSC, such norms and guidelines are abjectly missing at the level of lower and district courts.[18] As a result, the provision of free legal aid becomes a farce and people feel dissuaded from using the services of free legal aid bodies.

It is quite often seen that certain kinds of institutional arrangements or service provisions for some people remain dysfunctional or unutilised for reasons of procedural intricacies or lack of knowledge on part of intended beneficiaries the ways to approach the institutions or avail their services. This kind of situation can also be detected in case of institutions and processes for availing free legal aid to a large extent

Concluding observations

India's march towards securing for her citizens equal justice and free legal aid has indeed phenomenal

given the circumstances amidst which these cherished goals have been sought to be materialised. As a matter of fact, there has always been doubt in the minds of both the constitution makers as well as experts whether such a lofty ideal could be practiced in the country amidst the prevailing levels of social inequalities and economic backwardness. This presumably could have been the reason that the constitution makers desisted from inserting such a provision even in the chapter on directive principles of state policy. Moreover, international experts on legal aid continued to doubt the extent to which free legal aid could be provided effectively to the vast majority of people living in rural areas with low levels of literacy and related constraints.[19] Notwithstanding such qualms, clamour for guaranteeing to the people of India right to equal justice and free legal aid remained in the mainstream of political discourse. Greater fillip to the subtle moves of the executive was provided by the Supreme Court which missed no opportunity to argue for concrete legislative and executive steps for implementing the ideal of equal justice and free legal aid. The enactment of enabling legislation on free legal aid in 1987 came as a turning point which visualised creation of comprehensive and multilayered machinery for providing legal services to the needy and poor people across the country. The concept of Lok Adalats has also become a revolutionary idea which has helped in effective delivery of legal aid to a large number of people. Now with rapid advances in technology, the prospects of convergence in the practice of legal aid are likely to prove game changer in the sphere of access to justice at mass level.[20] Hence, irrespective of the host of issues and challenges facing the delivery of legal services, the trajectory of free legal aid from being a directive principle to becoming focus area of state action has indeed been reassuring, and days do not seem to be too far when India would be reckoned as a model for securing equal justice and free legal aid to her people.

References:

1. G. Mallikarjun, 'Legal Aid in India and the Judicial Contribution', *NALSAR Law Review,* vol. 7, no. 1, 2013, p. 238
2. Silky Mukherjee, 'Constitutional Provisions for Legal Aid in India' *Bharati Law Review*, January-March, 2013, p. 151
3. J. N. Pandey, *Constitutional Law of India*, Central Law Agency, Allahabad, 2020, p. 85
4. Silky Mukherjee, op. cit.
5. P. M. Bakshi, *The Constitution of India*, Universal Law Publishing, New Delhi, 2020, p. 59
6. *M. H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548
7. *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1377
8. *Khatri v. State of Bihar*, AIR 1981 SC 928
9. *Suk Das v. Union Territory of Arunachal Pradesh*, AIR 1986 SC 991
10. *State of Haryana v. Darshana Devi*, AIR 1972 SC 855
11. Ibid.
12. See, Upendra Baxi, 'Legal Assistance to the poor: A Critique of the Expert Committee Report', *Economic and Political Weekly*, vol. 10, no. 27, July 5, 1975
13. See, Farzana Akter, 'The Standard of Assistance from Legal Aid Lawyers: An Indian Perspective', *Indian Law Review*, vol. 5, no. 2, April, 2021, pp. 189-209
14. Jeet Singh Mann, 'Restoring the Confidence of the People in Free Legal Aid Services in India', in Raman Mittal and K. V. Sreemithun (eds.), *Legal Aid: Catalyst for Social Change*, Satyam Law International, New Delhi, 2012, p. 197
15. Op. cit.
16. See, Jeet Singh Mann, *Comparative Legal Aid Systems and India*, Routledge, New Delhi, 2022
17. Dhananjay Mahapatra, 'Legal aid little help as 1 lawyer for 161 inmates', *The Times of India*, (New Delhi), January 30, 2020
18. Jeet Singh Mann, 'Plight of Legal Aid Consuls at the District Courts of India, *Economic and Political Weekly*, vol. 55, no. 19, May 9, 2020
19. See, Richard K. Gordon and Jonathan M. Lindsay, 'Law and the Poor in Rural India: The Prospects for Legal Aid', *American University International Law Review*, vol. 5, no. 3, 1990, available at: https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1591&context=auilr, accessed on May 05, 2022
20. Saurabh Sood, 'Convergence in the Practice of Legal Aid to Improve Access to Justice', *Asian Journal of Legal Education*, vol. 6, no. 1-2, July 2019, p. 21

Saji Narayanan C.K.

Indian Constitution on Transforming Labour

An important aspect of the Constitution of independent India is of Labour Reforms. A brief account of its inception and growth with the times

Dr. Ambedkar is known in the annals of history as the architect of India's Constitution. But he was also the architect of India's labour reforms. He was instrumental in formulating most of the important labour laws in the country while he was the first labour minister of India as a member of the Viceroy's council. His passion for the cause of workers resulted in many provisions regarding labour being included in the Indian Constitution. The provisions of the Indian Constitution contain many visionary ideas, which often was added or diluted to accommodate the views of others in the Constituent Assembly. Dr. Ambedkar has shown his brilliance by including the Philosophy of social justice in the Constitution. Many ideas were also later added after the time of Dr. Ambedkar. About the principle of equal pay for equal work in Article 39 (d), Dr. Ambedkar said: "It is for the first time that I think in any industry the principle of equal pay for equal work has been established irrespective of the sex" (Legislative Assembly Debates, Vol. I, 8th February 1944, p. 131).

Overview of Labour Provisions in the Constitution

Trade Union Rights

Trade Union and worker's right to organise emanates from the ideas like 'freedom of speech and expression' (Article 19(1)(a)), 'freedom to assemble peacefully without arms' (Article 19(1)(b)) and 'right to form associations or unions' (Article 19(1)(c)) in the Constitution of India. 'Right to demonstrate' is enshrined in Article 19(1)(a) as well as Article 19(1)(c). The right to demonstrate is a part of the 'right to form associations or unions'. Even though 'freedom of speech and expression' guarantees against the curtailment of citizens' rights by the State, the government can impose 'reasonable restrictions' (Article 19(2)) on demonstrations, picketing and strikes with respect to the grounds enumerated in Article 19(2),[1] 19(3) and 19(4). Peaceful and orderly demonstrations enable workers to effectively communicate their demands not only to the employers but also to governmental agencies as well as the general public.

Directive Principles on Labour

Directive principles contained in Articles 36 to 51 "shall not be enforceable by any Court" as per Article 37; still, the same Article also says they are "fundamental in the governance" and "State to apply these principles in making laws." Articles 38 (social, economic and

political justices), 39 (social equality), 41 (Right to work), 42 (humane conditions of work and maternity relief), 43 (Living Wage) and 43-A (participation of workers in management) are considered to be the 'magna carta' of industrial jurisprudence in the Indian context.

Article 38 says the State shall strive to secure a social order in which social, economic and political justices are assured to promote the welfare of the people. Sub article (2), which was later inserted in 1979, says, the State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities among individuals and groups of people.

Article 39 specifically requires the State to direct its policy towards securing the following principles:(a) Equal rights of men and women in work, (b) Distribution of ownership and control of the material resources for the common good, (c) Preventing concentration of wealth and means of production, (d) Equal pay for equal work for both men and women, (e) To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter jobs and (f) Freedom and dignity to children and youth and are protected against exploitation and moral and material abandonment. The idea of equal pay for equal work corresponds to the idea of 'equal protection before the law' and is further enforced through the Equal Remuneration Act, 1976. Article 39(f) places an obligation upon the State to provide for the sustenance and education of deprived children in tune with Articles 23 and 24.

Article 41 highlights the State's responsibility for the right to work, right to education and public assistance in certain cases. Article 42 provides for the State's obligation for just and humane conditions of work and maternity relief. The Maternity Benefit Act, 1961 and the Employee's State Insurance Act, 1948 were in tune with these provisions. Article 47 imposes a duty upon the State to raise the level of nutrition and the standard of living and the improvement of public health. This is a guide to assessing minimum wages.

Provisions of Labour in Concurrent List

While making India's Constitution, labour was placed in the 'Concurrent List' so that both Centre and States could legislate on labour. Dr. Ambedkar wanted it to be on the Union list as he stressed the need for uniformity of labour laws. But the federal government created by the Government of India Act, 1935 envisaged the inclusion of labour legislation in the concurrent legislative list, which according to Ambedkar, had created a very serious situation. If there was no central legislation, each province might make laws with provincial considerations but different from other provinces. Thus considerations of general and national importance will be neglected. Even today, this is relevant when States oppose the formulation of a National Minimum Wage. Again, the

Courtesy: https://www.deccanherald.com/opinion/panorama/why-constitution-is-a-de-facto-charter-of-labour-rights-958221.html

issue surfaced recently before the Supreme Court when it observed that most States are diverting the funds of Building and other Construction Workers' Welfare law to other activities. In the Concurrent list, those which deal with labour are Entry No. 55 on Regulation of labour and safety in mines and oil fields, Entry No. 22 on Trade Unions and industrial and labour disputes, Entry No. 61 on Industrial disputes concerning Union employees, Entry No. 23 on Social Security and insurance, employment and unemployment, Entry No. 24 on the welfare of labour including conditions of work, provident funds, invalidity and old-age pension and maternity and Entry No. 65 on Union agencies and institutions for vocational training.

Other Provisions Related to Labour

The right to life and personal liberty is guaranteed under Article 21. It says, no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits traffic in human beings and forced labour. Article 24 prohibits child labour, especially the employment of children below the age of fourteen years in factories, mines or any other hazardous employment.

Article 43 on Living Wage

Article 43[2] of Directive Principles imposes an obligation to a 'living wage', conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities in all sectors. The Article refers to a 'living wage' and not 'minimum wage'. A 'socialist' framework to enable the working people a decent standard of life has further been promised by the 42nd Amendment.

While India became independent, leaders of the country had ambitious dreams about the people's wage structure and living standards. The new Government of independent India constituted a 'Committee on Fair Wages' in November 1948 to propose the future wage structure. Recommendations of the Committee on Fair Wages in 1949 formed the basis of our law relating to wages. The committee recommended that workers' wages should advance through three levels within a span of time

The Three-tier Wage Structure in India

While India became independent, leaders of the country had ambitious dreams about the people's wage structure and living standards. The new Government of independent India constituted a 'Committee on Fair Wages' in November 1948 to propose the future wage structure. Recommendations of the Committee on Fair Wages in 1949 formed the basis of our law relating to wages. The committee recommended that workers' wages should advance through three levels within a span of time. They are 1. Every working person in the country should be ensured 'minimum wage', 2. Then it should be raised to a higher level called 'fair wage', 3. Thereafter it should reach the highest level of 'living wage'. The Supreme Court of India discussed such a concept of wage in the Raptakos Brett case (AIR 1992 SC 504): "Broadly, the wage structure can be divided into three categories- 1. The basic 'minimum wage' provides bare subsistence and is at the poverty-line level. 2. A little above is the 'fair wage'. 3. Finally, the 'living wage' comes at a comfort level. It is impossible to demarcate these wage structure levels with any precision. There are, however, well-accepted norms which broadly distinguish one category of pay structure from another." The aspirations of the Indian society were reflected in the words of the Supreme Court when it explained the wage transition in the Hindustan Times Ltd. Case (AIR 1952 SC 1352): "At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue as an industry. Above this is the fair wage, which may roughly be said to approximate to the need-based minimum, in the sense of a wage which is adequate to cover the normal needs of an average employee regarded as a human being in the civilised society. Above the fair wage is the 'living wage' - a wage 'which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen'."

Report of the Committee on

Fair Wages (P.6) explains the idea of wages developed in the west: "According to the United Provinces Labour Enquiry Committee, wages were classified into four categories, viz., poverty level, minimum subsistence level, the subsistence plus level, and the comfort level." The third category would approximate the fair wage and the fourth to the living wage. The tests laid down by the Royal Commission on the basic wage for the Commonwealth of Australia have been endorsed by the report of the Fair Wages Committee and broadly approved by the five judges' bench of the Supreme Court in the Express Newspapers (Private) Ltd., and Another vs The Union of India and Others (AIR 1958 SC 578: 1959 1 SCR 12).

Art. 43- Advancing the Constitutional Concept of "Living Wage"

The Report of the Committee (p.8) says about the idea of the minimum wage: "the minimum wage must provide not merely for the bare sustenance of life but for the preservation of the worker's efficiency. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities."Fair wages will consider the comparative wages in similar other industries in the region based on the "industry cum region formula".

A living wage has been treated as an ideal to be achieved as enshrined in the Constitution. A living wage represents a decent level of living with all amenities available. According to the South Australian Act of 1912, the living wage means "a sum sufficient for the normal and reasonable needs of the average employee living in a locality where work under consideration is done or is to be done."According to the Committee on Fair Wages, the living wage represented the higher level of a fair wage.Report of the Committee (P.6) explains the concept of a living wage: "the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age."

Supreme Court on Living Wage

The judicial trend was to reduce the gap between a fair wage and a living wage. In Jay deep industries case (AIR 1972 SC 605),Supreme Court said that even after the fixation of minimum rates of wages under the Act, it was open to an Industrial Tribunal to fix minimum wages at higher or lower rates depending on the circumstances of the case.

Supreme Court of India in the Standard Vacuum Refining Co. points out the difficulty in distinguishing the ideas of the three categories of wages: "In dealing with wage structure, it is usual to divide wages into three broad categories: the basic minimum wage is the bare subsistence wage; above it is the fair wage, and beyond the fair wage is the living wage. It would be obvious that the concepts of these three wages cannot be described in definite words because their contents are elastic, and they are bound to vary from time to time and from country to country. Sometimes the said three categories of wages are described as the poverty level, the subsistence level and the comfort or the decency level. It would be difficult and also inexpedient to attempt the task of giving an adequate precision to these concepts."[3] In the same case, Supreme Court cites the efforts of foreign judges to clarify the idea of fair wage: "Several attempts have nevertheless been made to describe generally the contents of these respective concepts from time to time. The most celebrated of these attempts was made by Mr. Justice Higgins in his judgment in 1907 in a proceeding usually referred to as the Harvester Case. Sitting as President of the Commonwealth Court of Conciliation and Arbitration, the learned Judge posed the question as to what is

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the model or criterion by which fairness or reasonableness is to be determined, and he answered it by saying that "a fair and reasonable wage in the case of an unskilled labourer must be all amount adequate to cover the normal needs of the average employee regarded as a human being living in a civilised community." At the same time, in the same case, Supreme Court is clear that the criteria differ from country to country: "What is a subsistence wage in one country may appear to be much below the subsistence level in another; the same is true about a fair wage and a living wage; what is a fair wage in one country may be treated as a living wage in another, whereas what may be regarded as a living wage in one country may be no more than a fair wage in another."

According to Allahabad High Court in the case of Shree Satya NarainTulsi Manas vs Workman Compensation Commissioner (dt. 26 May 2006):"the word 'living wage' contained in Article 43 means the wages by which a worker can maintain his life to live with dignity with all other facilities as contained and implicit in Article 21 as held by the Supreme Court in various decisions. 'Living wage'is to secure to all workers a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The word'otherwise' mentioned in Article 43 of the Constitution, contained in Directive Principles, read with Article 21 of the Constitution fully covers the case of such workers."

Social Justice and Supreme Court

Higher Courts in our country have been instrumental in implementing the social progression contained in the provisions of the Constitution in the area of labour relations. They have opened up expanding horizons of socio-economic justice. This includes Decent wages, securing humane working conditions, care-free retirement etc.

In Lipton Ltd. Case (AIR 1959 SC 676) Supreme Court said in fixing the Minimum wages, consideration should be from workers' point of view. Such wage should be the first charge in the industry. The Wadala Factory case (AIR 1986 SC 1794) further advanced the cause of social justice by holding that the wage structure of workers should normally not be revised to their prejudice. In the Crown Aluminium Works case (AIR 1958 SC 30) (& also in Express Newspapers case), Justice Shri Gajendra Gadkar said that employment of labour on starvation wage could not be encouraged or favoured in a modern developed welfare state.

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Concept of Minimum Wages

The Supreme Court explained the concept of minimum wage excellently in the Raptakos Brett case (AIR 1992 SC 504): "The concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. The Tripartite Committee of the Indian Labour Conference held in New Delhi in 1957 declared the wage policy which was to be followed during the Second Five Year Plan." In the same case, Supreme Court accepted the norms for fixation of minimum wages declared by the Indian Labour Conference in 1957: "The Conference accepted the following five norms of the fixation of 'minimum wage'. (i) In calculating the minimum wage, the standard working-class family should be taken to consist of consumption units for one-earner; the earnings of women, children and adolescents should be disregarded. (ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity. (iii) Clothing requirement should be estimated at per capita consumption of 18 years per annum, giving the average workers' family of four a

total of 72 yards. (iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wages. (v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20% of the total minimum wage." The Supreme Court felt it necessary to add the following additional components as a guide for fixing the minimum wage in the industry keeping in view, the socio-economic aspect of the wage structure: "(vi) Children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage."

Supreme Court clarified further: "The wage structure which approximately answers these six components is nothing more than a minimum wage at subsistence level…….The purchasing power of today's wage cannot be judged by making calculations that are solely based on a 30-40-year-old wage structure. The only reasonable way to determine the category of wage structure is to evaluate each component of the category concerned in the light of the prevailing prices. There has been a sky-rocketing rise in the prices, and the inflation chart is going up so fast that the only way to do justice to the labour is to determine the money value of various components of the minimum wage in the context of today."

Paying Less than Minimum Wages is Bonded Labour

In the Asiad Labour case (AIR 1982 SC 1473), Chief Justice Chandrachud expanded the definition of 'forced labour' in Art. 23 and included those who are paid less than minimum wages under the category of 'forced labour.' In Sanjit Roy case (Rajasthan Famine Relief Works case -AIR 1983 SC 328) Chief Justice Chandrachud said: "The State cannot be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions."

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Even those employed in institutions that were founded not with the motive of earning profits but for religious and charitable purposes are to be paid minimum wages. Allahabad High Court makes this clear in the case of Shree Satya Narain Tulsi Manas vs Workman Compensation Commissioner (dt 26 May 2006): "Articles 14 of the Constitution of India make it clear that the workers in the employment of such institutions cannot be discriminated against. Considering the provisions of Articles 21, 38(2) and 43 of the Constitution of India, the view is irresistible that such workers are also entitled to get minimum wages as the right to life under Article 21 of the Constitution of India. Article 43 of the Constitution of India also makes it clear and does not make any discrimination while stating 'to all workers, agricultural, industrial or otherwise' and all such workers are entitled to get a living wage." It further clarifies the legal intention embedded in Article 43: "While other employees may enjoy national and festival holidays, the workers in an industry or an agricultural farm must work throughout and should not avail of any holiday is not the philosophy of Article 43. As human beings, they are entitled to a period of rest which would enable them to fully enjoy their leisure and participate in social and cultural activities."

The Historic Code on Wages, 2019

Recently, the Code on Wage, 2019 passed by the Parliament is termed historic and revolutionary by Bharatiya Mazdoor Sangh since the last worker in the unorganised sector in India will benefit from the minimum wage

and other wage laws under the Code. At present, only nearly 7% of total workers, especially in the organised sector, have any benefit from wage laws. The present major shortcomings to the wage laws have been rectified in the Code, viz., the lack of universal application, applicable only to certain scheduled sectors, different wages for different sectors, different jobs etc. The Code has removed the old system of scheduling sectors for minimum wages.

Article 43A on participation in management

Participation of workers is a part of industrial democracy. Article 43A[4] on 'participation of workers in the management of Industries' is a later addition introduced by the 42nd Amendment in 1976. The Article is intended to herald industrial democracy and mark "the end of industrial bonded labour", in the words of Justice Krishna Iyer. The Supreme Court, in the case National Textile Workers vs P.R. Ramkrishnan And Others (1983 AIR 75 SC, 1983 SCR (1) 9, five judges' bench), while enlightening the vision in the Article 43 A, links its spirit to the constitutional goal of socialism: "The constitutional mandate is therefore clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital, but the workers should also be entitled to participate in it because in a socialist pattern of society, the enterprise which is a centre of economic power should be controlled not only by capital but also by labour. It is, therefore, idle to contend, thirty-two years (judgement is in the year 1982) after coming into force of the Constitution and particularly after the introduction of Article 43A in the Constitution, that the workers should have no voice in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court. It would indeed be strange that the workers who have contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power." Even a recent 2021 judgement of the Madras High Court in Five Member Committee of Employees of Appu Hotels Ltd. Chennai vs Tourism Finance Corporation of India Ltd. (WP SR NOS.3786 AND 3789 OF 2021, dt. 22 January 2021) recapitulated this constitutional goal.

Even the constitutional Amendment of 1978 that rectified many changes made during the emergency period as well as amended the process of proclaiming the emergency, did not change the inclusion of Article 43A during the emergency period. While lauding the constitutional provision, the High Court of Rajasthanin H.S. Chauhan and Ors. vs Life Insurance Corporation of India (1982 WLN 321) says only through legislation can the provision be given a practical shape: "High sounding, well-intentioned, radical directive of 'participation of workers in management' of industries, an important golden relic of 42nd Amendment has withstood scrapping by and scrutiny of 44th Amendment and is still enshrined as Article 43A of the Constitution. Whether this directive is accepted and honoured or kept as a decoration and illumination of statute only, is a question on which legislature and, not the judiciary, can adjudicate…….. What a poor homage the State has paid to Article 43A by putting the onerous work norms and harsh measures of their enforcement, requires serious heart-searching, meditation and introspection."At the same time, it also made it clear that Directive Principles of State Policy are fundamental in governance: "Article 43A regarding 'workers participation in management' is not a lofty ideal only, but all concerned should not forget that Article 37 makes them 'fundamental' in the governance of the country and the same Article 37 itself says that it is the duty of the State to apply these principles in making laws."

The initial capital grows over time due to the labour contributed by the worker. The labour should be converted to the share or capital released to the workers. Once the worker has the feeling that he is also the owner, his

The constitutional mandate is therefore clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital, but the workers should also be entitled to participate in it because in a socialist pattern of society, the enterprise which is a centre of economic power should be controlled not only by capital but also by labour

contribution to the development of the industry and productivity will accelerate manifold.

Experience of Labourisation in Different Countries

In western society, there was a master-slave relationship during the primary stage of history. During the industrial revolution, it got reformed into master-servant relations. Later, the worker's role increased in some advanced countries, leading to various levels of worker participation in the industry. Participation of workers in the industry is in three aspects: 1. Participation in capital or ownership- this can be through the distribution of equity shares among workers. 2. Participation in management- this can be through worker directors on the board and consultation with workers on various aspects of management, including closure proceedings. 3. Sharing of profit. Participation in all these aspects will lead to labourisation of industry. The Indian Constitution envisages only the second aspect, i.e., participation in management. When Mahatma Gandhiji said workers should be co-workers with the management, BMS demanded that workers should be co-owners in an establishment.

The American experience of giving shares to workers has been strategically well. It has improved the overall productivity. Countries like France, Germany and Scandinavian countries have experimented with co-management and co-determinism. France had a scheme framed by General De Gaulle whereby increased capital should be converted to shares to be distributed among workers. There, the worker representatives are selected through proportional representation. Sweden has successfully and profitably improved their industries by providing workers with participation in management. In West Germany, Israel and Mexico, workers also have a role in economic policy decisions. Hence strikes were reduced considerably. There is worker representation in Parliament also in some countries. The upper house of the German Parliament has upto 50% labour representatives.

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Yugoslavia had developed the concept of labourisation further under the direction and supervision of the National Republican Assembly. There, it is a combination of government ownership and labourisation. Yugoslavian Constitution mentions the income distribution among workers instead of sharing profits. They have direct decision making by all workers together in smaller units and representative participation in larger units.

Indian Experience in Labourisation

In India, there were several examples where worker participation has improved the condition of the industry. One such example was Jaipur Metals and Minerals, which was a sick establishment that later became profitable through labourisation. There, through cooperative society, 50% of the shares were transferred to workers.

Supreme Court,in the case National Textile Workers vs P.R. Ramkrishnan and others (1983 AIR 75 SC, 1983 SCR (1) 9, five-judge bench) explained the ground level limitations of the idea of participation in management in the Indian context: "As the law stands today, the workers in a factory owned by a company do not have any hand in the birth of a company, in its working during its existence and also in its death by dissolution. Workers' participation in the affairs of a company or the ushering in of industrial democracy is quite a laudable object. That is the reason for enacting Article 43-A of the Constitution. Art. 43-A clearly states that the State to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings etc." Supreme Court in the same case proposeed the solution to

the problem in company matters: "If the workers are issued shares, then they would no doubt be entitled to participate in the winding-up proceedings as contributories. This may be one way of solving the problem by legislative means. Another way of providing a forum to the workers representative in matters relating to the winding-up of a company." High Court of Rajasthan in H.S. Chauhan and Ors. vs Life Insurance Corporation of India (1982 WLN 321) made it clear the role of workers in the fixation of work norms in the industry: "The unilateral fixation of work norms is, therefore, against the intentions of the socio-economic progressive legislations like the Industrial Disputes Act and the Directive Principles with have now been after the 42nd amendment, introduced, for the participation of the workers in the management."

In our basic labour law, the Industrial Disputes Act, 1947, a works committee is to be formed in units having more than 100 workers. But in actual working, the decisions of the works committee were considered as mere advice or guidance, and the management does not care about the decisions. A joint management council is another system formed through collective agreements. In many establishments, worker representatives are there in welfare and canteen committees. Workers have the right to select efficient and committed representatives through a secret ballot, whether they belong to major unions or minor unions.

In 1990, the VP Singh Government drafted a "Participation in Management Bill". It proposed, in effect, only an advisory role to workers in the name of participation. The bill says workers are given participation in the fora at four levels viz, Shop level committee, industry level council, Management board, national-level monitoring committee. It is also provided that the owner's decision is supreme in the case of a dispute between the owner and workers. In Germany, both management and workers elect a common representative, and his decision is made final.

BMS has demanded the formation of a national commission for deciding on industrial management.

Conclusion

The million-rupee question is regarding giving practical shape to the visionary ideas contained in the Directive Principles of State Policy. While presenting India's Constitution, Dr. Ambedkar said: "Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is that 'Man was vile'" (fault of those who deal with it). This proved to be true when using the provisions of the Constitution, Smt. Indira Gandhi led India to the dark days by declaring an emergency in 1975. Despite a Constitutional provision for a living wage, even minimum wage is a distant dream for the majority of Indians today, leave alone a fair wage and living wage. Supreme Court in Raptakos Brett case (AIR 1992 SC 504) observed: "The workers are hopefully looking forward to achieving the said ideal. The promises are piling up, but the day of fulfilment is nowhere in sight. Looking as a whole, Industrial wage has not yet risen higher than the level of the minimum wage." Thus, when we celebrate the 75th year of India's independence, it is high time to look into the Constitution and see whether the aspirations of the freedom fighters have been realised. This is the most appropriate time to rectify it.

References:

1. Subs. by the Constitution (First Amendment) Act, 1951, s. 3, for cl. (2) (with retrospective effect).
2. Article 43. Living wage, etc, for workers- The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas
3. Standard Vacuum Refining Co. vs Its Workmen and Another, 1961 AIR 895: 1961 SCR (3) 536.
4. Article 43A. "*Participation of workers in management of industries*. - The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry."

Uniform Civil Code and Personal Law

There was a thought provoking debate in the Constituent Assembly regarding a proposal to add two new sub-clauses to the Article 13. A look at the debate focused around Uniform Civil Code

When Article 13 was being debated in the Constituent Assembly, Mohammed Ismail, a member from Madras, proposed to add two new sub-clauses to it. There was a heated debate on his proposal. This debate is actually related to the Uniform Civil Code. A study of this debate can be of great help in understanding the potential of this element embodied in our Constitution.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Sir, I move:

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:--

(h) to follow the personal law of the group or community to which he belongs or professes to belong.

(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed'."

Shri C. Subramaniam (Madras: General): On a point of order, Sir, the House has already passed an article in the Part on directive principles that there should be a Uniform Civil Code. Here the Honourable Member wants to move that everybody should have the liberty to follow the personal law of the group or community to which he belongs or professes to belong. This is going contrary to the article which has already been passed. We have already decided that as far as possible personal law should come under a Uniform Civil Code and this amendment is against the principle of that article.

As regards the other part of the amendment, it should be discussed when we take up article 15.

Mr. Vice-President: It is no point of order. Mr. Mohammed Ismail Sahib may continue his speech.

Mr. Mohammed Ismail Sahib: It is really true that I made a similar proposal when the directive principles were under discussion. I made it clear that this question of personal law ought really to come under the chapter Fundamental Rights and I also said that I shall, when the opportunity came, move this amendment at the proper time.

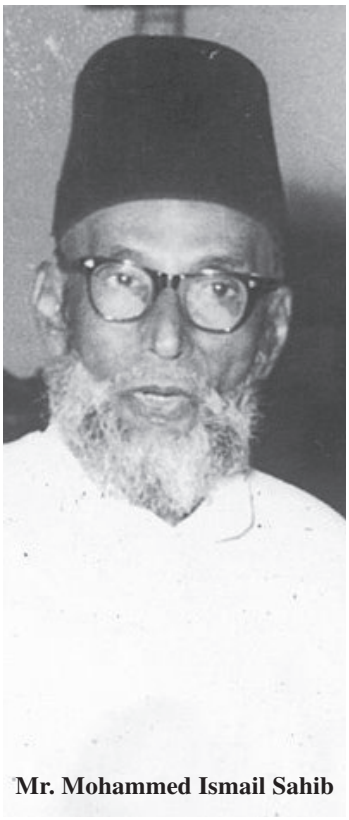
Person law is part of the religion of a community or section of people which professes this law. Anything which interferes with personal law will be taken by that community and also by the general public, who will judge this question with some commonsense, as a matter of interference with religion. Mr. Munshi while speaking on the subject previously said that this had nothing to do with religion and he asked what this had to do with religion. He as an illustrious and eminent lawyer ought to know that this

question of personal law is entirely based upon religion. It is nothing if it is not religious. But if he says that a religion should not deal with such things, then that is another matter. It is a question of difference of opinion as to what a religion should do or should not. People differ and people holding different views on this matter must tolerate the other view. There are religions which omit altogether to deal with the question of personal law and there are other religions like Hinduism and Islam which deal with personal law. Therefore I say that people ought to be given liberty of following their personal law.

It was also stated by Dr. Ambedkar on the floor of this House that the question of following personal law was not immutable. There were, as a matter of fact, sections of Muslims who do not follow the personal law prescribed by Islam, but that is a different matter. It is not reasonable to say that simply because a section of people do not want to follow a certain law of a certain religion or a certain part of that religion that other people also should not follow the law and that sections of people should be compelled not to follow that part of the religion which certain other sections of the same community are not following.

That is not really reasonable, Sir, and it is really immutable to the people who follow this law and this religion, because people, as they understand it, have not got the right to change their religion as they please. There may be people who contravene their own religion, but that is a different matter and we cannot compel others also to contravene their religion. Here the question of personal law affects only the people who follow this law. There is no compulsion exercised thereby on the general community or the general public. This House will remember that on another question, which is really a religious question--I mean the question of cow-slaughter--an obligation has been placed upon other communities than the one which considers the prohibition of cow-slaughter as a religious matter. But then, Sir,


Shri C. Subramaniam


Mr. Mohammed Ismail Sahib


Pandit Thakur Dass Bhargava

respecting the views and feelings of our friends, the minority communities who have got the right and privilege of slaughtering and eating the flesh of cows have agreed to the proposal put before the House, though that is going beyond affecting one particular community alone. Here, Sir, observance of personal law is confined only to the particular communities which are following these personal laws. There is no question of compelling any other community at all.

Pandit Thakur Dass Bhargava (East Punjab: General): Is the honourable Member aware of the restrictions of cow-slaughter in Pakistan?

Mr. Vice-President: Will the honourable Member kindly address the Chair?

Mr. Mohammed Ismail Sahib: I cannot hear him properly. I do not know what my friend is trying to say.

Mr. Vice-President: Do not pay any attention to that. Will the Honourable Member continue?

Pandit Thakur Dass Bhargava: I was enquiring of the honourable Gentleman if he knows that there is a restriction on cow-slaughter in Pakistan, in Afghanistan and in many Muhammadan countries. In India also the Muhammadan kings placed such a restriction.

Mr. Mohammed Ismail Sahib: They might have or not have made a provision of that sort. My point is that this is a question which affects a particular community, but because that community wanted to prevent that slaughter the other community, which need not prohibit that slaughter has agreed to that proposal. But with regard to personal law, it concerns a particular community which is following a particular set of personal laws and there is no question of compelling other people to follow that law and it is the question of the freedom of the minority or the majority people to follow their own personal law. As a matter of fact, I know there are an innumerable number of Hindus who think that interference with the personal law is interference with their religion. I know, Sir, that they have submitted a monster petition to the authorities or to the people who can have any say in the matter. Therefore it is not only Muslims but also Hindus who think that this is a religious question and that it should not be interfered with. The personal law of one community does not affect the other communities. Therefore, Sir, what I urge is that the freedom of following the personal law ought to be given to each community and it will not interfere with the rights of any other community.

Again, Mr. Munshi stated that Muslim countries like Egypt or Turkey have not any provision of this sort. Sir, I want to remind him that Turkey is under a treaty obligation. Under that treaty it is guaranteed that the non-Muslim minorities are entitled to have questions of family law and personal status regulated in accordance with their usage. That is the obligation under which Turkey has been placed and that is obtaining in Turkey now.

Then again with regard to Egypt, no such question of personal law arose in that country. But what is to be noted is that whatever the minorities in that country wanted has been granted to them: in fact more than what they wanted has been granted. And if personal law had also been a matter in which they wanted certain privileges, that would also have been granted.

Then there are other countries. Yugoslavia has agreed to give this privilege to the Muslims in following their family law and personal law.

Therefore, what I am asking for is not a matter which is peculiar to myself or to the minority community in this country. It is a thing, Sir, well understood in other parts of the world also.

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Dr. K. M. Baharul Islam

Uniform Civil Code
Our Approach is Less than Sincere

One of most discussed issues in our political circle is Uniform Civil Code, for which our Constitution has clearly provided. It is, though, a dream yet to come true. A critical study

Any discussion on the Uniform Civil Code (UCC) in India runs into imminent danger of encountering strong sentiments fraught with fear, suspicion, distrust and even an existential crisis. Many will also be equally jubilant about this issue as it will finally snatch away the so-called 'benefits' of *personal laws* being enjoyed by a section of the citizens. In this clash between the two, the debates around the UCC remained in a quagmire of politics, conspiracy, and a series of unfounded or, at best doubtful religious dogma for many decades. It is important to look into the issue from the perspectives that such a discussion deserves – objective, dispassionate and humane. This is a modest attempt to bring those perspectives into the UCC debate.

Uniform Civil Code (UCC) is part of the 'directive principles' given in Part IV (Article 36 to 51) of the Constitution of India. Article 44 of these directive principles says: "The State shall Endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India." Many argue that Article 37 of the Constitution says that these provisions "shall not be enforced by any court." But they conveniently forget that the same Article 37 also categorically declared that "the principles therein laid down are nevertheless fundamental in the country's governance and it shall be the duty of the State to apply these principles in making laws." Hence, UCC is a fundamental principle of governance in this country, and it is the "duty of the State" to implement these principles while making laws. Enforceability by a court is a stage that will come after the laws are enacted, and as such, making the law respecting the provisions of the Constitution comes first. In an attempt to put the cart before the horse, many people often misplaced their focus on the enforceability issue to dilute the direction given by the Constitution. That country has waited for three-quarters of a century since our independence, and successive governments have failed to attend to this directive and make an appropriate law to implement a Uniform Civil Code. This only indicates that our approach to the issue has been less than sincere, and at times outrightly dubious.

Besides the clear directive from the Constitution of India, several courts have nudged the governments to enact a UCC over the years, but they were ignored. Of course, the most famous of these judgements are the *Shah Bano Case* (1985),where the Supreme Court of India lamented that "the UCC remained a 'dead letter' despite the constitutional directive."

The court said in unequivocal terms:

"There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so."[1]

The highest court of the land also hinted at the absence of a political will to implement the Article 44 and enact such a common code for all the citizens but also recognised the challenges of bringing everybody onboard on a path to reform their religious laws and agree to some universal principles of justice, equity, and humanity in dealing with matters like marriage and inherence. This sentiment has reverberated in many other pronouncements from the courts in India. This was reiterated in *Jorden Diengdeh v. S.S. Chopra* (1985), wherein Justice O. Chinnappa Reddy, the court was of the view that laws regarding judicial separation, divorce, and nullity of marriage are not consistent in different personal laws and as such time, it's high time to set forth a standard law that applies to everyone, regardless of religion or caste[2]. In another judgment, Justice Kuldeep Singh in *Sarla Mudgal v. Union of India* underlined that a unified code would help protect the vulnerable and strengthen national unity and solidarity. He suggested that the government, in consultation with the stakeholders through the Law Commission[3], should initiate enacting a "comprehensive legislation in keeping with modern day concept of human rights for women."[4]

Despite the principle of governance laid down in Article 44 of the Constitution of India and several suggestions from the courts, why the issue of UCC is still going through endless circles of heated debate in media, academia and different public platforms? Let us address the elephant in the room. Is it the Muslims and some organisations like Muslim Personal Law Board are vehemently opposed to such a uniform law based on some unfounded fear? Perhaps such a popular percept finds roots in the constitutional debate around Article 35 in the draft constitution.[5] Members of the Constituent Assembly like Mohamed Ismail, Naziruddin Ahmad, Mahboob Ali Baig, B. Pocker Sahib, Hussain Imam proposed that the proposed UCC should not be made compulsory for leaving room for "any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."[6] They expressed apprehensions that such a code would override their religious freedom guaranteed in the Constitution (Freedom of Religion as provided under Article 25(1) as

a Fundamental Right). But, what defies logic is that such freedom is not absolute and therefore subject to other provisions like the Right to Equality under Articles 14 and 15. This confusion lingers till today when many people see UCC as opposed to the 'secular' nature of the state.

Unfortunately, this fear of UCC being a tool for majoritarian imposition on the religious minorities still dominates the public discourse. We are missing the wood for the trees. Harping on the Right to Freedom of Religion as laid down under Article 25(1) of the Constitution guarantees freedom to profess, practice and propagate religion to all persons in India. But, does it mean that such practices should run contrary to the universal principles of justice, equity and basic moral values? If the principles of social and gender justice are uniformly applied to all citizens of this country, how would these be opposed to the basic values of Islam? Therefore, we should dispel the doubt that the UCC does not mean the imposition of some 'Hindu' values on Muslims. Rather, it will codify the human values fundamental to all religions. Sri K M Munshi, in his innervation during the Constituent Assembly Debates, categorically says:

It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand.[7]

This is the version of secularism that our nation's founders were rooting for. It was an idea of India united in its basic human values safeguarding the rights of all, especially those of women who are often the most disadvantaged in asserting their rights. Right to equality is thus held in higher esteem in this *way of life* when various personal laws are considered. Munshi portrayed secularism as a cohesive force to unite all the citizens of this country. Many saw the assimilation or obliteration of the diversity cherished in India and argued that UCC would mean a 'one' way of life is being proposed to be imposed on all others. But we are talking about a code that will encompass the right to equality for all men and women. Irrespective of personal religious 'beliefs', no country can afford to have discriminatory behaviours in dealing with men or women in civil society or transactions regardless of ethnicity or religion.[8]

In India,many laws are applied to all citizens irrespective of religion, and many of those laws might not fit into one's own religious beliefs or principles. Barring some specifics of marriage and success related laws, we all are governed by uniform laws applicable to all. We have common laws for contracts, criminal procedures, transfer of property, sale of goods, and many others touching all aspects of life and transactions with others in the society. Suppose people of all religions living in this country could accept and govern their lives according to many laws already applied to them uniformly. What will happen if we all agree to a UCC that similarly covers our transactional behaviours dealing with fellow human beings in matters of marriage and inheritance also.

It is pertinent to note that the personal laws were the products of the British rule, which some can argue was a divisive design to separate Hindus and Muslims. In the imperialistic interest, the religious laws and differences in personal matters of our lives remain forever divided and not reconciled to some common values. After India's independence, Hindu code bills were adopted that largely codified Hindu personal laws that apply to various religions like Buddhists, Hindus, Jains and Sikhs. It is Christians, Jews, Muslims and Parsis who were left out. If UCC is adopted, it will reconcile all these religious laws to a common code that will apply to all. Courts have expressed their exasperation over the complexities of separate personal laws when family and succussion disputes are raised in from of them, and often, they could not adjudicate matters due to the applications of these diverse sets of personal laws.[9]

The hue and cry over UCC that often ends in the cacophony of *Islam Khhtrey Mein Hein* (Islam is in danger) are misguiding the gullible Muslims in India and making them bear burnt of a sustained *otherisation* campaign by a section of the society. It gives apparent credence to a calculated

and nurtured perception that all Muslims are marrying four times and getting the pleasure of multitudes of children, so on and so forth, only due to their personal law. Though it is acceptable in Islamic laws, if common law prohibits bigamy, will it destroy Islam or dimmish our Muslim community to extinction? In many countries, including the predominantly Islamic ones, Muslims live happily under such uniform laws. Did it make them less Muslims? Then why do some people need to cling to some religious laws that might be very well within the tenets of Islam but are not permitted under the laws of a democratic society where the collective wisdom decides that some practices are not permitted. As education and economic conditions are improving, people, Muslim or non-Muslim, accept monogamy and small family as a norm. If we look around, how many educated, financially sound Muslim families of doctors, lawyers, and professionals have more than one wife or more than one or two children. Demographic data would show that Muslims increasingly have decreasing birth rates over the past decades.[10] By vehemently opposing any mention of UCC as an infringement on religion, a section of the society is only fanning the notion that Muslims are by default polygamous or the only reason for the population explosion in the country.

Just for the sake of arguments, let us talk about any other uniform laws applied in the country. Almost all bank accounts or insurance policies in India are based on *riba* (interest), which is prohibited in Islam. But we don't see any vehement protest or anguish over that system. How many Muslims (or community leaders) avoid or consciously refuse to take the accrued interest in their bank account. Many Islamic principles are either discarded or ignored in a uniform system in such circumstances. Muslims worldwide, wherever necessary, under the circumstances, compromised with the prevailing laws of the land.

Professor Sherman A. Jackson, the King Faisal Chair of Islamic Thought and Culture and Professor of Religion and American Studies and Ethnicity at the University of Southern California, makes a very interesting argument that might throw some light on the context of Muslims and the issue of UCC in India. He critically examined how Muslims in America negotiate Islamic laws with the socio-political system they live in. He argues that Islamic law is negotiated over geography and time to a degree to which Muslims recognise local (including non-Muslim) customs within the realms of difference between legal and factual jurisdiction.[11] Some issues lie outside the rigorous *shariah* in modern multi-religious socio-political or secular systems. Therefore, Islam is accommodative enough to allow Muslims to manage them without relying on or offending Islamic law in many spheres of their lives. Perhaps, the interest-based banking system is an example of such negotiations that Muslims worldwide are undertaking. After all, Islam doesn't impose any unbearable action as said in The Quran: *He has chosen you and has imposed no difficulties on you in religion* (Surah Al-Ḥajj, Verse: 78). In another place, it is again reiterated - *Allah intends every facility for you*; *He does not want to put to difficulties.* (Surah Al-Baqarah, Verse: 185).

In fact, contrary to what many Muslims often forget, there is no compulsion in religion (Surah Al-Baqarah, Verse: 256). Therefore, the universal good is divine, and it urges 'all' people, including Muslims, to follow a just and a fair course of action and repose faith in the supreme power that will judge our actions. The Holy Quran says unequivocally - "*And if you judge, judge between them with equity; surely Allah loves those who judge equitably*" (Surah Al-Maidah, Verse:5). One can insist on many things prescribed in religion. Still, Islam, in its wisdom, upholds mercy, gentleness in worldly affairs as it makes room for situations where even the forbidden is accommodated - *But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful"* (Surah Al-Baqarah, Verse: 173).

The debate over the adoption of UCC is, therefore, seems unnecessary. In marriage, divorce, inheritance, adoption, and maintenance,one can easily adhere to what is considered just and equitable. In Islam, the individual's welfare is inextricably linked to the collective good. Muslims are required to follow the common good for all in the societies in which they live, to respect and honour the pledges that hold them together with all other communities in any society and well as to fulfil the obligations live owed to them in any country that will present a better image of Islam.[12] The common good or the pledges that hold us together in a

multi-religious, multi-ethnic and multi-cultural country like India is unfoundedly the Constitution. As the Constitution directs the State to adopt a UCC, the Muslims are bound to this pledge as proud citizens of this country.

While many people may ignorantly make UCC an anti-Muslim issue and see it as only directed towards snatching some extra facilities or rights that Muslims might be enjoying under their personal laws, many laws have been enacted to date that has been substantially beneficial to Hindu women. In independent India, the Law Minister, Dr. B. R. Ambedkar, wanted a uniform civil code that he thought would reform Hindu society and protect Muslim women. In 1956, four separate acts[13] were passed, but Muslims were left out since these Acts apply only to Hindus. Therefore, it is natural to assume that a UCC will impact Muslims and their personal law more. But it cannot be seen as majoritarian Hindu laws being imposed on Muslims. In all its intent, the UCC is envisaged to draw from the best principles of all religions. Justice V R Krishna Iyer argues: "Speaking for myself, there are several excellent provisions of the Muslim law understood in its pristine and progressive intendment which may adorn India's common civil code."[14] A UCC does not mean the Hindu Code Bill to be imposed on others; rather, some provisions of the Hindu law like the Hindu Undivided Family may also be abolished,or the same 'benefit' can be given to all other communities.[15]

Therefore, the UCC will substitute the separate *personal* laws applicable to various religious communities - Hindus, Christians, Parsis, Muslims – and provide a common law. Common law will naturally stipulate some religion-neutral provisions like monogamy, maintenance for divorced women, and equal rights for sons and daughters in inheritance matters. The UCC will necessarily replace some of various religious communities' personal law provisions, including Muslims. Therefore, it is important to emphasise all men and women's just and equitable rights rather than making it sound like an anti-Muslim agenda. Instead of constant media sensationalism, a larger open discussion across the social and civil society groups, especially the women, would boost the demand for the UCC. The rights of all our women should be at the centre of this issue, and any subversive politics over the UCC from any side will ultimately harm the benevolent goals of our Constitution.

References:

1. *Mohd. Ahmed Khan vs Shah Bano Begum and Ors*, 23 April, 1985; 1985 AIR 945, 1985 SCR (3) 844
2. *Ms. Jordan Diengdeh vs S.S. Chopra.* Delivered on 10 May, 1985; 1985 AIR 935, 1985 SCR Supl. (1) 704
3. Incedentaly, the 21st Law Commission of India, however, in consultation paper stated on August 31, 2018 that a uniform civil code is "neither necessary nor desirable at this stage", but it had suggested wide ranging changes in various family laws to address gender justice and equality. The Government of India has now referred the matterof UCC to the 22nd Law Commission again for their recommendations (Satement of the Law Minister in Lok Sabha, Feb 4, 2022).
4. *Smt. Sarla Mudgal. vs Union of India & Ors.* Delivered on 10 May, 1995; 1995 AIR 1531, 1995 SCC (3) 635
5. Constituent Assembly Debates (Proceedings), Volume VII, Tuesday 23rd November, 1948.
6. Ibid.
7. Constituent Assembly Debates (Proceedings), Vol. VII, Tuesday Nov. 23, 1948.
8. Shambhavi (2017). Uniform Civil Code: The Necessity and the Absurdity. *ILI Law Review*, Vol. 1, pp.12-29.
9. John Vallamattom v. Union of India 2003 (5) SCALE 384.
10. 'Fertility rates decline across religions in India, sharpest drop recorded among Muslims', *The Hindu (Sept 23, 2021)*; https://bit.ly/3Oussr6
11. Jackson, S. A. (2015). Islamic Law, Muslims and American Politics. *Islamic Law and Society*, 22(3), 253-291.
12. ALAssaf, T.O.A. (2019). The Rule: Possible Actions are not Invalidated by Actions that are Difficult to Perform and its Impact on "The adherence of Muslims to the prescribed rules of Islam in non-Muslim lands in light of thewaves of hostility to Islam". *International Journal of Liberal Arts and Social Science*, 7(11), 24-46.
13. Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoptions and Maintenance Act
14. Iyer, V. K. (1987). *The Muslim Women (Protection of Rights on Divorce) Act, 1986.* Eastern Book Company.
15. Sharda, R. (2017). True secularism demands a Uniform Civil Code. *Times of India* (Sept 11,2017).

Subuhi Khan

Uniform Civil Code
A Boon for Gender Justice and Social Welfare

The issue of the Uniform Civil Code is actually associated with the equal rights and equal treatment before the law. Why it is needed, an analytical contemplation with examples from real life

Uniform Civil Code means one law for all citizens of India in matters regarding marriage, divorce, inheritance, succession, adoptions etc'. This law will be uniformly applicable to all religious communities contrary to what is happening now that is different religious communities having different personal laws.

Origin of Uniform Civil Code

British government submitted a report in 1835 stating that it is the need of the hour to have uniform codification of Indian law in regards to crimes, evidence etc'. However they recommended that personal laws of Hindus and Muslims should be kept outside such codification of law. Later in 1941 the same British government formed B.N. Rau Committee to codify Hindu law in which they examined the need of common Hindu laws. The committee recommended a codified Hindu law stating this would give equal rights to women and recommended a civil code of marriage and succession for Hindus.

Hindu Code Bill

The draft of the Rau Committee came up for discussion in 1951 after the adoption of our Constitution. However, the bill lapsed and submitted again in 1952. In 1955 the bill was adopted as Hindu Marriage Act to amend and codify the laws relating to marriage and divorce. In 1956, the bill was adopted as Hindu Succession Act to amend and codify the laws relating to intestate or unwilled succession among Hindus, Buddhists, Jains, and Sikhs. The Hindu succession Act reformed the Hindu personal laws and gave women greater property rights, and ownership. It gave women property rights in their father's estate. The general rules of succession under the Act 1956 for a male who dies intestate was that heirs in Class I succeed in preference to heirs in other classes. An amendment to the Act in the year 2005 added more descendants elevating females to Class I heirs. The daughter is allotted the same share as is allotted to a son. The Hindu Minority and Guardianship Act, 1956 has codified laws of Hindus relating to minority and guardianship.

An Important Question to Ponder

It is an important question if equal rights have been given to Hindu women by the law of land then why is it so that women from other faiths are being deprived of getting this justice and equality? We are a secular country and no citizen of India should be deprived of their natural, human and legal rights only on the basis of their religion. If it happens it is clear violation of Article 15 of the Constitution which says that no discrimination should be done only on the basis of religion, race, caste, gender or place of birth.

I, as a Muslim woman lawyer and activist want to talk about few examples here.

Example 1

As per Sharia Law, a Muslim man is allowed to have four wives at the same time. Although Bigamy is prohibited in India under Section 494 of the Indian Penal Code which is a punishable offence still Muslim men get the benefit of having their personal law. They abuse a woman physically, mentally, sexually and psychologically and get away by hiding behind Sharia Law. In India we have Domestic Violence Act 2005 which provides a broad definition of 'domestic violence' including not only physical violence, but also other forms of violence such as emotional and psychological abuse as well but sadly Muslim women do not get the protection of laws of their own land.

Example 2

If the marital relationship between a Muslim man and a Muslim woman goes sour; the man can marry another woman without giving divorce to the existing wife but the wife cannot marry another man because she would need a divorce to marry again which she never gets and keep suffering to get closure so that she can move on in her life. Many Muslim men use it as a tool to keep their wives hanging in abusive marriages treating them as commodities not as humans because their ego does not want that their wives get a formal divorce and get married to another person.

Example 3

If the marital relationship between a Muslim man and a Muslim woman goes sour and both get a divorce through Sharia Law and later on both of them want to marry another persons who are not Muslim then it becomes a problem for them because in India interfaith marriages are solemnized under Special Marriage Act and as per the provisions of the Special

Courtesy: https://www.islamicity.org/740

Marriage Act if any of the parties is a divorcee they need to provide an attested copy of a formal divorce decree/order passed by a competent court of law.

Example 4

As per Sharia Law, the marriageable age of a girl is 'once she attains puberty' which is assumed to be 15 years. However, in many cases a girl attains puberty at the age of 12 so as per Sharia Law even a 12 year or a 15 year old girl is of marriageable age. This makes a mockery of The Prohibition of Child Marriage Act according to which the minimum marital age for girls is 18 years and for boys is 21 years. Now, the Indian government has decided to raise the legal age of marriage of women to 21 from 18 years which will empower girls and will help in building their careers but unfortunately even after becoming a law this will not benefit young Muslim girls as they are still in the clutches of Sharia Law. We must also note that around 23 percent of marriages in India are child marriages, despite having a law prohibiting child marriages for decades. Although, not all of them are between Muslims but a great percentage of these cases would be in Muslim community because of the following reason. There are various personal laws in India that specifically govern different religions. The Hindu Marriage Act of 1955 specifies the minimum legal age of marriage as 21 years for the groom and 18 years for the bride. Similarly, the Indian Christian Marriage Act of 1872 stipulates the age of 18 years for the bride and 21 years for the groom. The Foreign Marriage Act of 1969 and the Special Marriage Act of 1954 also have a similar minimum legal age of marriage. The Muslim Personal Law (Shariat) Application Act, 1937, on the other hand, provides that a boy and a girl who have attained puberty can marry each other.

As per Sharia Law, the woman is not the natural guardian of her own child. Father or his executor or in his absence, the paternal grandfather is the natural guardian and in charge of the minor. I have dealt with many cases where in case of husband's death the wife had been kicked out of the house without even giving her the custody of her own child or children

Example 5

Fortunately, Talaq-e-biddat (instant triple talaq) has been made a penalised offence by the present Narendra Modi led NDA government. However, Talaq-e-Hasan and Talaq-e-Ahsan which are extra-judicial form of divorce that only men can practice are still prevailing. Whether a woman agrees or she disagrees, one sided pronouncement of talaq are still valid as per Sharia Law which is absolutely against social and gender justice and does not give any security or stability to a woman even after getting married. On the other hand if a Muslim woman wants to take divorce she has to ask for a 'khula' from the Sharia Courts which are again in the clutches of patriarchal extremist men and they make it extremely difficult for a woman to take 'khula' and move on with her life.

Example 6

As per Sharia Law, the woman is not the natural guardian of her own child. Father or his executor or in his absence, the paternal grandfather is the natural guardian and in charge of the minor. I have dealt with many cases where in case of husband's death the wife had been kicked out of the house without even giving her the custody of her own child or children.

Example 7

There is a practice called Misyar marriage which means traveller's marriage. The word 'misyar' may mean to 'stop by' or 'stay for a short time'. In this arrangement the nikaah happens but the wife does not have any rights such as residence or maintenance or stability etc'. This marriage is kept secret from the public and the woman is expected to waive all her rights. What adds on to this irony is this that a Muslim man of any age can marry a Muslim girl as young as 12-14 years in the name of misyar marriage and can sexually exploit her in the garb of being married. This is clear cut violation of The Protection of Children from Sexual Offences Act (POCSO Act) which was enacted with the objective of protecting children from a slew of sexual offences. It is pertinent no note here that in the garb of being civil practices

many crimes are happening in our country without being caught or penalized.

Example 8

As per Muslim law adoption is not permissible for Muslims. However, the Supreme Court in a landmark judgment extended the right of adoption to Muslims also. In the Case titled as Shabnam Hashmi vs Union of India, (2014) 4 SCC 1, the Supreme Court declared that the right to adopt a child by a person as per the provisions of Juvenile Justice Act would prevail over all personal laws and religious codes in the country. The Juvenile Justice Act, 2002 defines adoption in Section 2(aa). It confers upon the adoptive parents and the child all rights, privileges and responsibilities that are attached to a normal parent child relationship. The Three judge bench consisting of Chief Justice P. Sathasivam and Justices Ranjan Gogoi and Shiv Kirti Singh however maintained that personal laws would continue to govern any person who chooses to submit himself until such time that the vision of a uniform civil code is achieved. It is pertinent to note here that legal pluralism in terms of personal laws creates a lot of burden on our judiciary resulting which many courts have time and again asked the state to enact a Uniform Civil Code across the nation.

Time to review and understand Article 25 (Right to Religion)

The Constitution of India guarantees to its' citizens to freely practice, profess and propagate their religion under Part III i.e. under fundamental rights. However, we forget two important things here. Firstly, this fundamental right is not absolute. It is subject to certain limitations i.e. public order, morality, decency etc'. For example, we have the right to offer namaz but not by blocking the roads and disturbing public order. We have the right to practice, profess and propagate our religion but we do not have the right to do anything which is against decency and morality. We do not have the right to abuse women and commit crimes against them in the garb of religious practices.

Moreover, in Bharat, every thought of human being has been respected in approaching God and practicing different religions but when malpractices in the name of religion come into conflict with the democratic values of a state or crimes being committed in the garb of religious practices then it has to be regulated by the law of land. Democracy prospers when religion becomes totally personal and individualistic, when it affects only our own life and liberty and it is limited to the doer itself, But when it starts affecting others, violating their person and property, violating their natural, human and legal rights then it becomes a malpractice and a crime and needs to be dealt with the law of land. We are a democracy not just because our premier of nation is chosen by people but also because we respect and adhere to commonality of law when our behavior and actions affect each other. In a secular democracy people have right to practice, profess and propagate their religion but the state has power and legitimacy to decree and enforce legal uniformity. Moreover, if any religious malpractice violates or clashes with the law of land or the constitution of India then the law of land prevails.

Moreover, in Bharat, every thought of human being has been respected in approaching God and practicing different religions but when malpractices in the name of religion come into conflict with the democratic values of a state or crimes being committed in the garb of religious practices then it has to be regulated by the law of land. Democracy prospers when religion becomes totally personal and individualistic, when it affects only our own life and liberty and it is limited to the doer itself

An Important Question?

Although the debate is about civil laws, we must not forget that behind the cover of having personal laws many crimes are being committed violating criminal laws of our country for example section 494 of Indian Penal Code (punishment for bigamy which may extend to 7 years), POCSO Act (An Act which was enacted to protect children from sexual offences), Domestic Violence Act and many other Acts and provisions. Can we allow that to happen in a civil society?

Muslim women and minor girls are being violated physically, emotionally, psychologically, verbally and economically and they are forced to shut up quoting religious laws. We, as a nation should not fail to protect our girls being subjected to such crimes. I, as a lawyer have seen so many women looking for a way out but unfortunately they have none. Many Muslim women are suffering from 'stockholm syndrome' because they do not find any solace or way out to get out of their abusive life. It is our collective responsibility to do something for these voiceless and vulnerable women.

An Unfinished Task

So it is pertinent to note here that Uniform Civil Code is neither a political nor a religious issue but a subject very eminent for social and gender justice. However, still pending through decades despite being a clear directive in our Constitution. It is also important to note here that article 44 is made non justiciable which means courts of law cannot adjudicate in this matter; which makes it all the more important for the state to take this initiative. Many Courts including the Supreme Court of India has reiterated again and again that the state in consultation with the stakeholders should initiate enacting a Uniform Civil Code across the nation.

UCC is the need of hour for the following reasons:

- To apply the universal principles of social and gender justice uniformly to all citizens of India.
- To avoid crimes in the garb of being civil/personal matters.
- To protect the vulnerable.
- To achieve parity in the legal age of marriage.
- To bring credibility, reliability, stability and respect in the institution of marriage.
- To lighten the burden of judiciary which has increased manyfold due to litigations arising because of multiple personal laws.
- To reform the malpractices and avoid crimes in the name of religion.
- To reconcile all personal laws and enact a just and equitable Civil Code adhering to the principles of truth, equality and justice.
- To fulfill the goals and objectives of our Constitution that is to secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation.

Although India is a secular country and must have uniform civil and criminal laws governing all citizens irrespective of their religions. However, the fact of the matter is that we still have pluralistic approach when it comes to civil laws and the country has different personal laws for different religions. It is important to note here that in the garb of civil or personal/family matters many crimes are happening which should not be allowed in a civic society at any cost

Conclusion

Although India is a secular country and must have uniform civil and criminal laws governing all citizens irrespective of their religions. However, the fact of the matter is that we still have pluralistic approach when it comes to civil laws and the country has different personal laws for different religions. It is important to note here that in the garb of civil or personal/family matters many crimes are happening which should not be allowed in a civic society at any cost.

Article 14 of Indian Constitution guarantees equality before the law, and equal protection of the law. Article 15 of Indian Constitution secures the citizens from every sort of discrimination on the grounds of religion, race, caste, sex or place of birth or any of them.

Preamble, The soul and the guiding light of our constitution is a reflection of the core constitutional values. The Preamble declares India a Sovereign Socialist Secular Democratic Republic committed to Justice, Equality and Liberty for the people.

Different personal laws applying to individuals differently just because of their religion is not just an absolute violation of articles 14 and 15 of our Constitution. But, it is also against the soul and the core of our Constitutional values and objectives.

Dr. O.P. Shukla

Directive Principles of State Policy and Social Justice

Article 46 underlines promotion of certain rights of deprived classes and their protection from social injustice and exploitation. An analysis of ground realities along with the legislations and court rulings

"Every Constitution must have an ideal and purpose, and the more I get acquainted with the India's, the longest in the world, the more I believe that its heart is in Part IV (Directive Principles State Policy)".

Fali Sam Nariman, the internationally respected and renowned legal luminary and Senior Advocate, Supreme Court of India, in his book[1] has said that: the *'Directive Principles of State Policy'* (Directive Principles) is the "heart of the Constitution". Justice KC Hedge of the Supreme Court in *'Kesavananda Bharati's* case observed: "the Fundamental Right and Directive Principles constitute the *"Conscience of the Constitution*".[2] Whereas, Justice MC Chagla, former chief Justice of India (CJI), was of the view that, if all these principles are implemented and fully caried out, our country would indeed be a heaven on earth. On the other hand, Dr. Ambedkar, had said: the Directive Principles have great value, since they fulfill the aim of economic democracy, rather than political democracy.

Speaking in a seminar organized by the 'Confederation of Indian Bar', on 28TH September 2013 in New Delhi, on "Directive Principles of Indian Constitution & Inclusive Growth", the CJI Shri Justice P. Sathasivam said: Fundamental Rights and the Directive Principles of State Policy needed to be balanced and harmonized if were to reap social order and empower people. The CJI said: In the landmark verdict in '*Minerva Mill*' case, the Constitution Bench had held that the Fundamental Rights and the Directive Principles are two wheels of the chariot in establishing the egalitarian social order". He also spoke of the challenges posed to the inclusive development: poverty, educational apartheid, caste-and gender-based discrimination. "Domination, discrimination and deprivation (are) three important determinants of social exclusion. Social exclusion causes poverty by hurting in two ways, materially as well as economically".[3] The then President of India, Pranab Mukherjee, who inaugurated the seminar, described the Directive Principles of State Policy as the "most magnificent '*Magna Carta*', of social and economic transformation". The President said the Mahatma Gandhi Rural Employment Guarantee Act,

the Right to Information Act, and the National Food Security Act, were legislated in conformity with the spirit of the

Directive Principles. The President further said: "the greater application of the Constitutional Directive Principles of State Policy in policy making could become an effective instrument in the pursuit of achieving inclusive growth?"[4]

Part IV of the Constitution - Directive Principles contains 16 Articles (36 to 51). These Articles primarily promote and protect the welfare of the people, better livelihood conditions, public health, education, role of legal profession in administering justice to the needy, and promotion of educational and economic interest of the SCs & STs and weaker sections of the society and protect them from exploitation. These Directives asserts that it shall be the duty of the State to follow both in the matter of administration as well as in making the laws. They embody the aims and objectives of the State under the republican Constitution, e.g., that it is a 'Welfare State'[5] and not a mere Police State; and the ideal of socio-economic justice.[6]

The drafting committee was greatly influenced by the Irish nationalist movement. They were certainly influenced by the form of Directive Principles of the Irish Constitution. The other sources however, were Indian Councils Act, 1909, Government of India Act, 1919 and Government of India Act 1935, Nehru Report (Motilal Nehru) 1928, and Sapru Committee Report, 1945, as such. Its chairman Dr BR Ambedkar, was under the great influence of western political thoughts and American Civil Rights Movement against Racial Discrimination.[7] The Drafting Committee borrowed the Directive Principles from the Irish Constitution of 1937 and incorporated in Part IV of the Indian Constitution. The scope of the Directive Principles is far and wide. Not only they include economic rights, but also principles relating to social justice, economic welfare, foreign policy and administrative matters. To some extent this can be attributed to the ideological diversity of the Constituent Assembly.

The Indian Constitution is unique from the other constitutions of the world, including USA, in the sense that it contained Fundamental Rights and Directive Principles. Thus, Directive Principles is one of the features which make Indian constitution different from the other constitutions of the world.

The author has been asked to write on the 'Directive Principles' with specific reference to Article 46. The author is of the view that Art. 46 is a focal point of Directive Principles, which emphatically underline promotion of certain rights of SCs & STs and their protection from social injustice and exploitation. Therefore, the author's endeavor would be to

confine to Art. 46 and make this piece readable and meaningful.

Legislature, Executive and Judiciary

From the survey of a some of the Supreme Court's initial judgments on Directive Principles, one would find that the Supreme Court paid scant attention to the Directive Principles on the ground that there was not much for the courts to do in implementing them, as they were not, as such, justiciable or enforceable like the Fundamental Rights.The duty of the courts in relation to the Directive came to be emphasised in later decisions, which trend reached its culmination in the 13- members Bench in *Keshevananda's* case.[8]

The responsibility of the governance of the country lies with the three organs of the State e.g.; *Executive, Legislature and Judiciary*. However, the initiative for social change or social justice mainly rests with the legislature. Thus, the main responsibility for the implementation lies on the legislature.[9] The comparative assessment of the working of the three branches of the government regarding implementation of Directive Principles, would eventually suggest as to which of the organ have made more use of the Directive Principles in achieving the goals fixed by the founding fathers. One can squarely say that it is the Judiciary, that has made maximum use of the Directive Principles to secure '*Social Justice*' to the needy and deprived.

Directive Principles and Judiciary

It was in 1973 in *Keshavananda Bharti's* case, when the Court eventually took initiative to implement Directive Principles. The Supreme Court, laid down certain broad propositions having effects in future cases before the court(s). The Court while examining the various facets of Article 39 (b)-(c), one of the Directive Principles, observed; "these clauses, together with other provisions of the Constitution, contain one main objective, namely, the '*building of a welfare State*' , and an '*egalitarian social order*',[10] to fix certain social and economic goals for immediate attainment by bringing about a '*non-violent social revolution*',[11] through such a social revolution the Constitution seeks to fulfill the basic need of the '*common man*' and to 'change the structure of the society'[12] and without which '*political democracy*' has no meaning."[13] *NM Thomas* case was also transformative in another important way. It was the first judgment to Art. iculate the role of Part. - IV in the Constitution, e.g.; Directive Principles, as a system of framework value they gave life to the abstract concept outlined in Fundamental Rights chapter.[14]

Article 46: Focal Point of Directive Principles

Art. 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker section. – The state shall promote with special care the educational and economic interest of the weaker section of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.[15]

This Article primarily contains three part.s. **(1)** that the state shall Promote with special care the'educational and **(2)** economic interest' of SCs & STs**(3)**, and 'Protect them from 'social injustices and all forms of 'exploitation'. The 1st part. mandates promotion of educational and 2nd part., economic interest of SCs & STs. Whereas, the last pArt. *inter alia*, underline protection of the said social groups from 'Social Injustice' and 'all forms of Exploitation'. From the perspective of 'Social Justice', Art. 46 is one of the most important and focal point of Directive Principles. Therefore, this provision should have been given utmost attention by Government, but unfortunately this hasn't happened.

Promotion and Protection of Educational Interest

There are various amendments to the Constitution, that were made at the initiative of the Supreme Court e.g.; 42nd Amendment, (1976) Art.s 39, 39A, 43A, 48A, 44th Amendment (1978) Art. 38, 97th Amendment (2011) Art. 43B and 86th Amendment (2002) Art. 21A. One can squarely say that Judiciary has made more use of the Directive Principles than any other branch of the government.

(a) Art.. 21 A - Right to Education:[16] Invoking Art. 45 Directive Principles, elementary education was accorded highest priority. By way of this amendment of the Constitution, elementary education was made fundamental right. The objective was to provide free and compulsory education to all children of the age of 6-14 years in the country.

(b) Art.. 39A – Equal Justice and free legal aid: Art. 39 A was inserted by Constitution (42nd Amendment), Act, 1976.[17] The primary aim is to provide free legal services to the poor and weaker sections of society who cannot afford to take services of the lawyer to conduct case in the court of law.

Articles 21A and 39A, 43A, 38 and are having direct bearing on the socio-economic and educational development of the SCs & STs. For instance, amendment of Articles 21A and 39A are good initiative for the promotion and protection of the educational and other interest of the SCs & STs. India has made significant success so far as primary education is concerned. But dropout rate and the low level of learning has been a great challenge for both the center and state government(s). Although, Right to Education Act, 2009, has made free and compulsory education for children for 6 to 14 years of age, but in some backward states, there is no sufficient infrastructure - drinking water, toilet, playground, teachers, and school buildings etc. in the schools.

The Telegraph recent report (Basant Kumar Mohanty - Online report, published on September 9, 2022) stated that 51,000 government schools has been closed during 2018-19. Activist working in the area of education said that the central and state government's failure to appoint regular teachers and their engagement of teacher in surveys and election duties affected quality of teaching and learning, forcing parents to look towards private schools.

Ashok Aggarwal, president, All India Parents-Teachers Association and Member, Delhi University, said: this situation will worsen in the next two decades and the government schooling system - which offer free education and is expected to be a lifeline for the poor - was headed for abolition. Sameet Panda, a Right to Food Campaign activist, who also works towards ensuring RTE Act, compliance in Odisha, said: the center's school's closer policy had led to many Trible children's being denied education. Mitra Ranjan, another activist said that government was abdicated its responsibility. He further said: the government should do a mapping exercised for the dropouts and the children engaged in as child labours. They must be brought back to school. Then all the government schools will be crowded.

The education minister – Dharmendra Pradhan in a reply to a Rajya Sabha question in March this year said: that opening or closing of schools was the duty/function of the state's governments, since education was in the concurrent list.

The education system in backward states – UP, MP, Odisha and Bihar etc.; have almost collapsed. Besides, this recent policy decision of the government is going to badly affect the SCs & STs. And in the end result the directives, part. icularly Art. 46 read with Art. 21A is going to be redundant, per say.[18]

Promotion and Protection of Economic Interest

The Constitution provides several safeguards, concessions (reservation education and government jobs/ employments) and benefits to SCs & STs, besides, reservation in Legislatures.[19] On the question of reservation and other benefits under the Constitution for these social groups and in pursuance of the Directive Principles enumerated in Art. 46, the Supreme Court in 1976, in *N M Thomas*, had taken a position in favour of weaker sections without any reservation.[20] The Supreme Court has also Art.iculated the right such as the right to living wages in a number of decisions dealing with the labour law.[21]

It was, in this landmark judgement(*N M Thomas*),that the Supreme Court for first time introduce the doctrine of '*Creamy Lawyer*'. The Supreme Court in another historic judgement in *Indra Sawhney* in 1992 inter alia held that Art. 16 read with Art. 46 of the Constitution imports a dynamic concept which enjoins the state to extirpate the exploitation of the SCs & STs as speedily as

Articles 21A and 39A, 43A, 38 and are having direct bearing on the socio-economic and educational development of the SCs & STs. For instance, amendment of Articles 21A and 39A are good initiative for the promotion and protection of the educational and other interest of the SCs & STs. India has made significant success so far as primary education is concerned

possible.[22] Surprisingly, there is no mechanism for equitablefor equitable distribution of benefits ofreservation and other welfare schemes

Surprisingly, there is no mechanism for equitable distribution of benefits of reservation and other welfare schemes in the Constitution. However, there are Constitutional authorities e.g.; National Commission for Scheduled Castes and National Commission for Schedule Tribes created under Articles 338 & 338A of the Constitution. The functions of these authorities are to monitor and protect the interests of SCs & STs. Regrettably, these commission(s) have been always occupied by the dominant SCs & STs. Therefore, these Commissions or Authorities are of no use for the other lower section of SCs & STs. Thus, in such a situation, the dominant and powerful SCs & STs are taking the maximum advantage of the reservation policy and other benefits. Whereas, the extremely backward castes/tribes among the SCs & STs are getting nothing. Therefore, the equality code -Articles 14 to 16 read with Art. 46 are, as such, meaningless for the neglected and deprived sections of the society.

From the beginning, there has been persistent demand from the lower strata of SCs & STs for their share in the reservation and other government welfare schemes.The Government of Punjab, therefore, had adopted a policy of '*Sub – Categorization*' of SCs & STs in 1960/70 for equitable distribution of benefits within different social groups. Later this policy was adopted by Haryana in 1990, Bihar in 2007, UP and AP in 2000. But this policy was challenged by one '*EV Chinnahai*' belonging to dominant social groups of Andhra Pradesh, in the Supreme Court. There was huge protest against these dominant castes[23] and the 'reservation policy', and also against the manner of implementation.

We have seen that the main causes of social injustice and exploitation of SCs & STs are socio - economic inequalities existing in our society. Besides, the social disabilities - untouchability, illiteracy, poverty, caste base discrimination, unemployment and poverty. Though, the exploitation has also been prohibited under Art. 39, read with 23 and 24 of the Constitution

However, after *Indira Sawhney's* case in 1992, there was an opportunity for the Apex Court in '*EV Chinnahai*' case[24] to fix the anomalies in the reservation policy and to make the policy fair, just and equitable as mandated under Articles 14 to 16 read with Art. 46 of the Constitution. But the court sadly decided the case in 2005 in favors of the dominant castes, and against the poor, neglected and deprived social groups. This was a huge disappointment for the neglected and deprived sections of SCs & STs. Therefore, the author resorted to judicial intervention and filed a PIL challenging the judgment (*EV Chinnahai*) in Supreme Court seeking review of the judgment and equitable distribution of the benefits of reservation. The matter is pending in Supreme Court for final adjudication.[25]

Protection from Social Injustice and Exploitation

We have seen that the main causes of social injustice and exploitation of SCs & STs are socio - economic inequalities existing in our society. Besides, the social disabilities - untouchability, illiteracy, poverty, caste base discrimination, unemployment and poverty. Though, the exploitation has also been prohibited under Art. 39, read with 23 and 24 of the Constitution. However, despite of various Constitutional safeguards and concessions provided to improve the socio-economic conditions of the SCs & STs, they remain vulnerable. It is true that they have been denied number of civil rights. Also, they have been subjected to various offences, indignities, humiliations and harassment.

Under these circumstances, it was found necessary to enact a special legislation to check and deter crime against SCs & STs. To achieve this objective the Government of India enacted Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, there is no change in the mindset and behavior of the dominant high castes - the perpetrator of crime against SCs & STs till today. The crime is on increase instead of declining.[26] Even today the needy and other deprived sections have not been accorded their due(s) as envisaged by the founding fathers. One must appreciate the patience of these unfortunate sections that

they have not revolted. However, the nation cannot afford to take them granted for too long. We may recall the famous speech of Dr. Ambedkar, made by the parliament, in January, 1950:

"On the 26th January 1950, we are going to enter into a life of contradictions…. How long shall we continue to live in this life of contradictions. How long shall we continue to deny equality in our social and economic life. If we continue to deny it for long, we will do so only by putting our political democracy at peril. We must remove this contradiction at the earliest possible movement or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."[27]

Has the Constitution Obstructed Social Justice[28]

There was a perception before eighties, that the Constitution as interpreted by the Supreme Court is coming in the way of '*social progress*'. Another perception was that Directive Principles cannot be achieved without sacrificing the Fundamental Rights. Therefore, the confusion was with regards to the conflict between *Fundamental Rights* and *Directive Principles*. Eminent scholar SP Sathe, examined some of the directive's principles e.g.; Art.s 37, 38 and Supreme Court decisions in – ***Champakam Dorairajan***[29], Bhimsinghji[30] ***NM, Thomas***[31], ***Francis Coralie Mullin***[32], ***Authorized officer Thanjavur***[33], ***ABSK Sangh (Rly)***[34]. Prof Sathe found that the initiatives of the Supreme Court in the last 5 years (before 1981) on the issue of 'Social Justice' shows its concern for weaker sections through its interpretation of the Directive Principles and Fundamental Rights. In fact, various decision of the Supreme Court clearly shows that 'Social Justice' was its top priority. Whereas, the legislature as well as the government failed to come-out with a concrete and radical programme for Art.iculating social justice. He suggested government to work in harmony to serve nation better[35].

It is also a fact that the reservation policy has been in dispute from the very beginning because of the opposition from the anti-reservationists –high castes Hindus.

On the other hand, the vested interest class (dominant castes) among SCs & STs was given free hand to misappropriate the benefits of reservation and dishonestly grab all the benefits, at the cost of extremely backward and neglected sections of SCs & STs[36].

However, the issue(s) of 'Sub-Categorization', 'Creamy Layer' and 'Exclusion' of dominant castes/communities among SCs & STs from the preview of reservation policy, are pending in the Supreme Court for the final adjudication. We may still wait for the final decision of the Supreme Court, until then, it will not be fair or advisable to make any comments on query raised above.

Implementation of the Directive Principles?

Preamble: WE THE PEOPLE of India having, solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to its citizens JUSTICE; social; economic; and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status, and of opportunity; and to promote them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty – sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OUERSELF THIS CONSTITUTION.[37]

The Preamble is a brief introduction to the Constitution. It contains all the objectives and principles that were based on the *socialist, Gandhian and liberal ideologie*s. It refers to the India as a *Sovereign 'Socialist' Secular Democratic Republic*. Dr. Ambedkar, chairman of the drafting committee was clear that it was not the Constituent Assembly's prerogative to impose an economic philosophy,

On the 26th January 1950, we are going to enter into a life of contradictions…. How long shall we continue to live in this life of contradictions. How long shall we continue to deny equality in our social and economic life. If we continue to deny it for long, we will do so only by putting our political democracy at peril. We must remove this contradiction at the earliest possible movement or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up

or an economic system, upon the future generation.[38] The Indian Constitution was compatible with a socialist government, and in some respect (especially through the DPSPs) it even encourages socialism. It was not, however, a socialist constitution[39]. In the initial years of our Independence, it was believed that the objectives of the Directive Principles could be achieved only by '*socialistic pattern of society*', as than understood, which includes state ownership of all the resources by legislations providing for acquisition, nationalization, creation of state monopoly etc. But in later decades, there was criticisms of that policy on the ground that it had failed to improve the lot of '*Common Man*' to bring about a socio-economic transformation in the country. It was also felt that the government was incapable of handling economy - running trade, commerce and industry properly, on account of which the public sector undertaking had become liability rather than assets. However, in 1990's part.ly under the influence of globalization and economic reform, the trade and commerce between different countries had gone up and there was international atmosphere both political and economic which resulted into liberalization and economic reforms in the country.

Have We Forgotten the 'Common Man'?[40]

The author had the opportunity to write a piece on '*Indian Constitution and social justice*'[41] and to discuss the dangers of the policy of globalization and economic reform of 1990s. The Former President of India K R Narayanan was apprehensive about the economic reform policy and its impact on the on the disadvantage and marginalizes social groups. He thus, observed as under:

Our three-way fast lane of liberalisation, privatisation and globalisation must provide safe pedestrian crossing for the unempowered India also, so that it too can move towards equality of status and opportunity."[42]

Similarly, Justice Rajendra Sachar and eminent economist Jagdish Bhagwati has had also expressed the similar views.[43] Regrettably, while perusing the economic reform policy, the Class IV or Grade D employments / services were at the target of the government. Factually speaking, these services were the only source of survival for the poor and weaker sections of the society.

It would be seen that in 1990's, the Central Pay Commissions (55th& 6th) had recommended abolition of Class IV/Grade 'D' Government Jobs/Employment in their reports. The Class IV/ Grade D primarily consists of petty and menial job/employment such as Peon, Chowkidar, Safaiwala, Sweeper, Sewer Man, Water Man, Khalasi, Daftari, etc. These job/employments are meant only for unskilled, semi-educated and illiterate persons. The then Congress Government was fully aware of the ground realities and plight of the extremely backward SCs &STs in the country. Also, rightly or wrongly, they had neglected and denied the benefits of the reservation and other government policies during last 40-45 years. Sadly, the government under the guise of globalization and economic reforms, took a policy decision to accept the recommendations of the Pay Commissions. Finally, all these petty jobs/employments were outsourced.[44]

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You may recall the historic judgment of the Supreme Court in *State of Kerala v. NM Thomas*. While discussing the principle of '*Equality of Opportunity*', and '*Distributive Justice*' the Court laid down the principles of social justice for the poor, neglected and deprived sections of the society. Justice Krishna Ayer inter alia observed as under:

"….Obviously, Article 16(4) was not designed to get more Harijans into government as scavenger and sweeper but as 'officers and bosses', so that administrative power may become the common property of high and low, homogenized and integrated in to one community.[45]

The government, by its disastrous policy decision that too, without providing alternative job or occupation, made this poor and neglected sections of the society jobless. This was a

well thought and well-designed onslaught on the "Roti, Kapada Aur Makaan" (Food, clothing and shelter) on the deprived sections of the society. This was precisely, as discussed above, the negation and disrespect to the jurisprudence of 'social justice' propounded by the Supreme Court in *NM Thomas*, and other subsequent decisions, and the Constitution of India.

Sanitation Workers and Sewer Deaths

The government is celebrating 75 years of Independence as 'Amrit Mahotsav'. But amazingly, the government could not eradicate the inhumanbarbaric practice of manual scavenging during this long period. The government however, by invoking Art..46 of the Directive Principles of the Constitution, had enacted a social legislation- '*The Prohibition of Employment as Manual Scavengers, and their Rehabilitation Act, 2013*'.[46] The government repeatedly claiming that manual scavenging has been eradicated. But the reports as well as data available in media suggest that, because of the non-implementation of the law, it has been proved to be a big failure.

The Untouchability was abolished long back by way of inserting Art.. 17 in the Constitution. Also, the practice of Untouchability was made a '*Constitutional Offence*', per say. Surprisingly, both practice of Untouchability, as well as Manual Scavenging, is existing even today in the country. The national dailies are reporting incidents of manual scavenging and 'Sewer Deaths' of 'Sanitation Workers' almost every day.[47] There are visible and invisible deaths of Sanitation Workers in the country. The Tehalka Magazine 'Special Report' of 2007 stated that 22,000 Sanitation Workers are dying every year across the country.[48] On the contrary the Government of India making false statement in the Parliament that: "Government have achieved target of abolition of manual scavenging".[49] The Delhi High Court in one such case observed: "OUR SOCIETY HAS marginalised manual scavengers to its darkest corner" and they remained "unseen and forgotten" for generations".[50]

The funds allocated in the Union Budget of India for the welfare and rehabilitation of the manual scavengers and sanitation workers very rarely spent and remains unutilised. Some time it is not even released, as such. For instance, the budget allocation for self -employment scheme for rehabilitation of manual scavengers for the period of 2020-2021 was 110 crores. But the data collected till September showed that no funds were released, the implementing agency – National Safai Karamcharis Finance Development Corporation has 11.80 crore for extending rehabilitation benefits to the identified manual scavengers and their dependents unutilised with it. There were no manual scavengers or their family members who were identify for the skilled development training this year till mid -September, the response said.[51] This is how the government utilised the fund allocated. Therefore, the allocation of the fund has become just an annual formality or customary exercise.

Dr. Usha Ramanathan, internationally recognised jurist, in her note of appreciation for Bhasha Singh, the author of the book, - *UNSEEN, THE TRUTH ABOUT INDIA'S MANNUAL SCAVENGERS*, inter alia, observed as under:

"Article 17 declared untouchability to a Constitutional offence. Over 40 years were to roll by, till, in 1993, Parliament enacted a law to acknowledging manual scavenging as a continuing scourge that has to be eradicated. Ten years later, and the law had to be dragged out of hiding and into the courtroom to be forced back into life. Another decade has gone past, and the struggle against invisibility, denial, neglect and indifference continue to be waged. Bhasa's narrative is replete with the voices, angst, courage and indomitable spirit of those whom this system holds in unholy captivity, and who's generation have been weighed down by this abhorrence

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practice that, unhindered, perpetuate untouchability."[52]

Malika Sarabhai, a celebrated dancer and activist said: "To say we are proud Indian is to deny the shameful circumstances of our people engaged in the most dehumanising of profession of collecting human excreta with little more than their hand".[53] A renowned Hindi writer-Maitreyi Pushpa, asked a very valid question: "In which definition of the humanity are these humans who clean our excrement included.[54] Why eradication of untouchability, and prohibition of engagement of manual scavengers has become such a huge problem for the government? The answer is simple, according to the author the government have no interest in addressing this issue, as they believe in status quo for the reason(s) best known to the government.

Failure of Directive Principles

Fali Nariman in Chapter IV of his book[55] has elaborately discussed the failure of principles and the governance of the country. While commenting on the governance, he quoted the opinion of prestigious *British weekly*: "India will continue to be misgoverned until politics become more of a vehicle for policies instead of the other way around - that is, instead of policies being fashioned to suit the politics of the day". He further said that 'to govern this country well, we must recognize (and then attempt to overcome) certain problem that hinder good governance'. Fali Nariman underlined various problems such as: (1) number and the immense pressure they exert on national resources (2) failure to learn from the legacies of our political past (3) leaders and officials (or majority of them) are corrupt[56] constitutional functionaries fail to function in the manner they are expected to, especially when time are bad, (5) and crises of competence.[57] The learned senior lawyer therefore, has underlined the various factors that are responsible for misgovernance of the country, and hence the failure of the Directive Principles.

Conclusion

The 'Common Man' do represent eventually an average Indian, but according to author he certainly does not represent the lower strata e.g.; SCs & STs. Both represent two diametrically opposite social groups and two different Bharat (India). One is '*Visible India*' and another is '*Invisible India*'.[58] The Government of India has inter alia admitted that:

"Manual scavenger is a modern - day slavery. That is continues in 21st century India is something that should horrify and outrage us all."[59]

During last 75 years, in compliance of Art.. 46 of the Directive Principles read with Art.s 14 to 16, a very few of the SCs & STs e.g.; 6 to 8 out of 1677(App), has been nursed and vast majority of them around 1671 SCs & STs has been neglected and denied opportunities as mandated under the Constitution.[60] The poverty, starvation deaths, unemployment, child labour, illiteracy, child prostitution, trafficking, atrocities on SCs & STs, Sewer deaths and crime against woman, are some of the bitter realities of our country. To a very great extent, the governance of the country has defeated the very purpose for which Fundamental Rights and Directive Principles, were incorporated in the Constitution. Moreover, in whatever manner the country is being governed, whether, it is socialistic or Gaudian pattern of governance, it had failed, for whatever reason, to improve the lot of '*Common Man*' to bring about a socio-economic transformation in the country.

After going through the forgoing discussion, the author is of considered view that the Preamble, Fundamental Rights and Directive Principles (Art.. 46), have no meaning for these social groups (SCs & STs). Also, the objective of the 'Welfare State', that was envisaged by the founding fathers, promoted and strengthen by the

Malika Sarabhai, a celebrated dancer and activist said: "To say we are proud Indian is to deny the shameful circumstances of our people engaged in the most dehumanising of profession of collecting human excreta with little more than their hand".A renowned Hindi writer-Maitreyi Pushpa, asked a very valid question: "In which definition of the humanity are these humans who clean our excrement included

Supreme Court in the landmark judgment in *Keshavananda Bharati*(1973), *NM Thomas* (1976), *Minerva Mill*(1980), have almost collapsed.

The author would like to end this piece with the queries raised by 'Common Man' (one must keep in his/her mind that he is not representing SCs & STs) if we are to present to the member of the current generation (typified by the Common Man), our document of governance, he is bound to aske (on behalf of the people he represents)[61]:

Tell me What it done for me?
How are we better off?

Now it is the turn of the executive as well as legislature to answer these questions. And the answer is to implement the Directive Principles with sincerity and honesty and to reestablish Welfare State to achieve equitable development ofSCs & STs and egalitarian social order.

References:

1. Fali S Nariman: '*The State of the Nation, In the context of the Indian's Constitution*', New Delhi, (2017), p. 247. New Delhi, (2017), p. 247.
2. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461
3. *The Hindu*, September 30th, 2013.
4. T*he Business Standard News*, September 28, 2013. See also *The Statesman News Service*, September, 2013.
5. *Kesavananda Bharati* v. State of Kerala, AIR 1973 SC 1461
6. *Union of India v. Hindustan Development Corpn.*, AIR 1994 SC 988 (990). See also Durga Das Basu, *Shorter Constitution of India*, 2021, Vol 1, p. 783. New Delhi.
7. See Stephen Tuck, We Ain't, What We Ought To Be, The Black Freedom Struggle From Emancipation To Obama, 2011, p 281. See also, *Constituent Assembly of India*; *Task and Mission*, Mohamad Shabbir (Edited by) B R Ambedkar, Study in Law and Society, 1997, p. 44.
8. Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.
9. Sathya Narayan (Complied and edited), Upendra Baxi (forward by), Selected Work of SP Sathe & Constitutionalism,2015, Vol.-1, p. 54, New Delhi.
10. Kesavananada Bharti v. State of Kerala AIR 1973 SC 1461.
11. Kesavananada Bharti v. State of Kerala AIR 1973 SC 1461.
12. Kesavananada Bharti v. State of Kerala AIR 1973 SC 1461.
13. Kesavananada Bharti v. State of Kerala AIR 1973 SC 1461.
14. Gautam Bhatia, Transformative Constitution, 2019, p. 76.
15. Durga Das Basu, *Shorter Constitution of India*, 2021 Vol. 1 New Delhi p. 799
16. Unni Krishanan v. State of AP (1993) 1 SCC 645; Ashok Kumar Thakur vs. State of Bihar,(1995) 5 SCC 403 (paras 3and 17)
17. Durga Das Basu, *Shorter Constitution of India*, 2021 Vol. 1 New Delhi p. 799
18. See detailed report by Rema Nagarajan, School enrolment data indicate 45% OBC-19% Dalits in India, July 30, 2021.
19. Arts. 14 to 16, 46, 331 and 332. See O P Shukla,'Legislative Reservation And Social Development, Under the Indian Constitution', 1919 p. 105-118 (An unpublished thesis submitted to the Delhi University for the award of degree of Doctor of Philosophy, 1999). See also, Unnamati Syama Sundar, (Edited and selected by 'No Laughing Matter', 2019, p. 54-56.
20. See, Sathya Narayan (Complied and edited), Upendra Baxi (forward by), *Selected Work of SP Sathe & Constitutionalism*, 2015, Vol. -1, p. 54, New Delhi.
21. See, Sathya Narayan (Complied and edited), Upendra Baxi (forward by), *Selected Work of SP Sathe & Constitutionalism* 2015, Vol. -1, p. 54, New Delhi.
22. Indra Sawhney v. Union of India, AIR 1993 SC 477 – nine judges.
23. The dominant castes are: Chamar/Jatav/Dusad/Reghar, in UP, MP, Orissa, Delhi, Punjab, Rajasthan, Haryana, Namo Sudra in West Bengal, Mahar Maharashtra, Malain Andhra Pradesh, Telangana, Karnatak, and Tamil Nadu, etc.
24. 'EV Chinnahaiv. State of AP, (2005) 1 SCC 394.
25. OP Shukla v. Union of India, & Anr WP (Civil) No1348 of 2019.
26. Dr OP Shukla, *Indian Constitution and Social Justice*, Ram Bahadur Rai, Dr Mahesh Sharma (Edited by)'Revisiting Our Constitution', 2019, p.118.
27. Dr Ambedkar speech in Parliament on 26th, January, 1950.
28. See, Sathya Narayan (Complied and edited), Upendra Baxi (forward by), *Selected Work of SP Sathe & Constitutionalism 2015*, Vol. -1, p. 54, New Delhi.
29. *Chamapakam Dorajrajan* AIR 1951 SC 226.
30. *Bhimsinghji, v. Union of India*, 1981 1 SCC 166.
31. *NM, Thomas v State of Kerala*

AIR 1976 SC 490.

32. *Francis Coralie Mullin v. Administration of UT of Delhi* (1981) AIR SCC 608
33. *Authorized officer Thanjavur v. S Nagnath Ayyar*, AIR 1079 SC 1487.
34. *ABSK Sangh (Rly) v. Union of India* (1981) 1 SCC 246 P. 309, para 123.
35. Sathya Narayan (Complied and edited), Upendra Baxi (forward by), *Selected Work of SP Sathe & Constitutionalism, 2015*, Vol. -1, p. 54, New Delhi.
36. The Central Government constituted high powered committee headed by BN Lokur, Law Secretary, Government of India, to suggest and advise the Government for revision of the list of SCs & STs. The Committee in its Report, in 1965 recommended exclusion certain dominant and advance castes and tribes (Vested interest class) from the preview of the reservation policy. The committee also recommended periodic review of the list/ scheduled to ensure equitable distribution of the benefits reservation among the various beneficiaries.
37. Durga Das Basu, *Shorter Constitution of India*, 2021 Vol. 1 New Delhi p. 1.
38. Gautam Bhatia, p. xxxiii. See also Parliament of India, Constituent Assembly Debates, Vol. VII. 15 November 1948 (speech of Dr Ambedkar). This point was emphasized by many of the framers during the Third reading of the Draft Constitution.
39. Gautam Bhatia, p. xxxiii.
40. For describing the very opening words of the Constitution - WE THE POPLE and who this Constitution is for? Fali Nariman, the learned Sr lawyer, has used the term '*Common Man*' under Chapter IV – 'HAVE WE FORGOTTEN THE COMMON MAN'. See for detailed discussion, Fali S Nariman: '*The State of the Nation, In the context of the Indian's Constitution*', New Delhi, (2017), p. 247. New Delhi, (2017), p. 244.
41. Dr OP Shukla, *Indian Constitution and Social Justice*, Ram Bahadur Rai, Dr Mahesh Sharma (Edited by) *Revisiting Our Constitution*, 2019, p.116.
42. Dr OP Shukla, *Indian Constitution and Social Justice*, Ram Bahadur Rai, Dr Mahesh Sharma (Edited by) *Revisiting Our Constitution*, 2019, p.116.
43. Dr OP Shukla, *Indian Constitution and Social Justice*, Ram Bahadur Rai, Dr Mahesh Sharma (Edited by) *Revisiting Our Constitution*, 2019, p.116.
44. Report of the Fifth and Sixth Central Pay Commission, Ministry of Finance, Department of Expenditure, Government of India, 1997 & 2004
45. *NM, Thomas v State of Kerala* AIR 1976 SC 490.
46. Durga Das Basu, *Shorter Constitution of India*, 2021 Vol. 1 New Delhi p. 805.
47. On 29th and 30th March, 2022, in two days only, 16 Sanitation Workers', 7 in Delhi, 5 in UP, and 4 in Rajasthan have died while cleaning -sewer/septic tank etc. There is no report available from other states. See Times of India, 31.3.2022, p.8.
48. S Anand '*LIFE INSIDE A BLACK HOLE*', TEHELKA 8 DCEMBER, 2007, p. 16.
49. The Times of India, December 8th, 2021.
50. The Indian Express, Thursday, May 31, 2018, p.6.
51. The Indian Express, Report, 21st September, 2020.See also Shivani Gupta: '*Gaon Connection*', India's Biggest Rural Insight Platform, Report, February 9th, 2022.
52. Bhasa Singh, *UNSEEN, THE TRUTH ABOUT INDIA'S MANNUAL SCAVENGERS*, New Delhi, 2014, p.i
53. Bhasa Singh, *UNSEEN, THE TRUTH ABOUT INDIA'S MANNUAL SCAVENGERS*, New Delhi, 2014, p.i
54. Bhasa Singh, *UNSEEN, THE TRUTH ABOUT INDIA'S MANNUAL SCAVENGERS*, New Delhi, 2014, p. ii
55. Fali S Nariman: '*The State of the Nation, In the context of the Indian's Constitution*', New Delhi, (2017) p. 257.
56. Fali S Nariman: '*The State of the Nation, In the context of the Indian's Constitution*', New Delhi, (2017) p. 257.
57. Fali S Nariman: 'The State of the Nation, In the context of the Indian's Constitution', New Delhi, (2017) p. 257.
58. Bhasa Singh, *UNSEEN, THE TRUTH ABOUT INDIA'S MANNUAL SCAVENGERS*, New Delhi, 2014.
59. National Commission for Safai Karamcharis, Ministry of Social Justice & Empowerment, Government of India, Report 2017-18, p. 7.
60. B N Lokur, *'Advisery Committee on the Revision of the List of Scheduled Castes and Scheduled Tribes*', Government of India, DepArt.ment of Social Security, Report, 1965.
61. Fali S Nariman: '*The State of the Nation, In the context of the Indian's Constitution*', New Delhi, (2017) p. 244.

Dr. Rajesh Kotecha Vaidya

Nutritious Food and Standard of Living

Many programmes have been implemented by the government to increase nutritional level of the population. A look at the plans as well as scopes

"*Vasudhaiva Kuṭumbakam*" is an ancient Indian saying, meaning "the world is one family", which summarises India's approach to all aspects of life, including economic development. Thus, the Sustainable Development Goals (SDGs) are part of the country's longstanding tradition and heritage. SDG 2 aims to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture, while SDG 3 emphasizes ensuring healthy lives and promoting health for all individuals at all ages. For the desirable development of the country, it is paramount to ensure that the nutritional health of the population of that country is taken care of.

Nutrition – An Important Component

Nutrition is an important component of individual and community health as the nutrition of the population is regarded as an economic asset and an important indicator of a nation's development. Nutrition is increasingly being recognised as an important symbol of progress, both publicly and globally. Nutrition has always been an essential need of humanity[1]. Proper and balanced nutrition is one of the most effective and least costly ways to reduce the burden of many diseases and their associated risk factors. To prevent physical deficiencies or hormonal imbalances, it is important to have a balanced diet rich in all nutrients. Nutrition is also necessary for you to increase your immunity and to enable you to fight against diseases.

Diet, a Fulcrum of Life

Diet (food) is the most important factor for sustenance of life. It is described in Ayurveda as the most important fulcrum of the three pillars of life (*Trayopastambha* i.e., diet, sleep and celibacy). When the body is supported by the *trayopastambha*, it is endowed with growth, strength and *varṇa*.

According to Ayurveda, the universe is made up of the *Panchamahābhūtas* (the five basic elements viz., sky, air, light, water and earth). Accordingly, diet is also called *Ākāshika, Vāyavya, Āgneya, Āapya* and *Pārthiva* which, when consumed in proper proportion, helps in nourishing *dehadhātu* (body tissues), growth, development and increase of *Ojas*. Diet is considered as *Mahābhaishajya* (best medicine). Various lifestyle disorders and many diseases are due to faulty dietary habits which can be prevented by following proper diet and dietary rules[2].

Ayurveda emphasises that the diet should be chosen according to the nature or composition of

the individual. According to Ayurveda, a beneficial and suitable diet (healthy food) is conducive to maintaining good health, longevity, strength, intelligence, a good voice and complexion. For a disease-free life, Ayurveda emphasises on the importance of proper nutrition through proper food choices, food combination and cooking methods, intake of food in right quantity, which gets digested as well as metabolised in time. The time, season and place of taking food are also important. It is advised to abstain from unhealthy diet (unclean food)[3].

Holistic Nutrition through Ayurveda

The ultimate aim of this medical science of ayurveda is the preservation of health and this can be achieved in two ways; by following guidelines regarding lifestyle to prevent diseases, and the eradication of the diseases that already afflict the person. Prerequisites for the prevention of diseases include healthy diet, protection of the environment, favourable social and cultural environment.[4] Ayurveda places great emphasis on ensuring holistic nutrition. A nutritious diet based on locally available foods and herbs is essential to the individual's body composition, physiological needs and season.[5] Ayurveda has a unique and holistic approach towards nutrition and diet. This method of treatment focuses on various aspects of dietetics and nutrition such as quality, quantity, methods of processing, rationality of the combination of foods, emotional aspects, nature of the consumer, geographical and environmental location, etc.[6] The biological agni (the digestive fire) a key unit of the philosophy of Ayurveda is on which the entire process of digestion, metabolism, immunity and indeed, the life force depends. System that promotes health (the *pathya* system[7]) is a major main feature of Ayurvedic medicine. Specific dietary and lifestyle guidelines are prescribed for individuals, along with drugs and therapies to facilitate homeostatic bio-mechanisms and health. This is a major salient feature of Ayurvedic medicinal science. Specific dietary and lifestyle guidelines are prescribed for individuals, along with drugs and therapies to facilitate homeostatic bio-mechanisms and health.

In the present times, nutritional science has developed into a broad and organised discipline of study. The contemporary perspective considers the gross components of diet such as carbohydrates, fats, proteins, minerals, water, etc. whereas Ayurveda looks at proper diet, combination of food, etc. Emphasis is placed on basic dietary guidelines, in terms of cooking method, storage, eating environment, hygiene and etiquette (the specification of the *Aṣṭa Āhār Vidhi*[8]),which are important in the protection and promotion of health and in the prevention of disease. Various classical Ayurveda texts (*Bhojan Kutūhala, Nighaṇṭu Ratnākar*) cover a range of topics on food ranging from variety of natural sources, recipes and properties in relation to seasons and places, food safety and remedies for the same and their health benefits. This provides comprehensive insights about food and health based on certain conceptual and theoretical positions.

The supply of nutrients to the human body depends not only on the amount of nutrients included in the food but also on its bioavailability.[9] Therefore, for effective treatment and dietary guidelines, it is necessary to consider the bioavailability of nutrients along with the nutritional content of foods when designing nutrition-sensitive policies and

Courtesy: https://www.unicef.org/india/

nutritional therapies. Proper metabolism is the key to good health. According to Ayurveda, *agni*(fire) is a major component of digestion and metabolism in our body. Food must be digested, absorbed and assimilated, which is indispensable for the existence of life; this action is performed by fire. In Ayurveda, the word *agni* is used for the digestion of food and metabolic products. Agni converts food into energy, which is responsible for all the vital functions of our body. According to Ayurveda, *dehāgni* (the body's fire) is the source of life, colour, strength/power, health, nourishment, radiance (*prabhā*), *oja*, enthusiasm (energy), and *prāṇa* (life energy) (ch.15/3).[10] The *agni* is innumerable in number because of its presence in all the atoms of the body. However, the number of *agnis* is described differently in various classical Ayurvedic texts. *Agni* is classified into 13 types on the basis of its functions and place of action, of which there is one *jatharāgni*, five *bhūtāgnis* and seven *dhātvāgnis*. The most important is the *jaṭharāgni*, which digests four different types of food and converts them into juices and stool. The five *bhūtāgnis* act on the physical part of the food, nourish the cosmic elements like space, air, etc., in the body. The seven *dhātvāgnis* act on the respective metals and as a result, there are two types of products in the entire transformation process—prasāda (essence) and kitta (residue).[11] Apart from improving the bioavailability of nutrients, AYUSH drugs also have various therapeutics. These are activities that can be an added benefit to the recipients.

Policy Initiatives by the Government of India

In this era of globalisation, increased production of processed foods, rapid urbanisation and changing lifestyles have changed the dietary pattern. Modern food systems have resulted in a decrease in the knowledge and use of traditional and local nutrient-rich foods and increased consumption of industrial and processed food products, leading to various nutritional problems.

At the National Level

In order to increase the nutritional level of the its population, India has taken several nutritional measures in the last fifty years, including the National Nutrition Programme 1993, National Food Security Act 2013, Integrated Child Development Scheme (ICDS), Mid-Day Meal Scheme, Poshan Abhiyaan 2018, etc. These and many other programmes have been implemented.The Sustainable Development Goals (SDGs) can be met only through high standards of governance at all levels. In this regard, India is particularly fortunate to have highly committed governments at the Centre and in the states. The Poshan Abhiyaan launched by the Hon'ble Prime Minister in March 2018 provides a platform of convergence where various Ministries and Departments worktowards the common goal of meeting nutritional outcomes and harmonising all measures to effectively improve the nutritional status of the population.

In the Drugs and Cosmetics Act, 1940, various herbs/ medicines have been explained under Balya, Brihan and the Nutritious categories. These Ayush food products such as Rambhaphal Rasayanam, Vidarikand, Kushmandavaleh, Shigru, Jackfruit etc., are highly nutritious. With the use of appropriate food technology, these food-grade AYUSH products can be promoted among the masses and also their potential can be explored for use in public health programmes. Various Ayurvedic herbs/medicines can be included as supplements in the existing Take Home Ration.

At the State Level

- State governments can play an important role in improving the nutritional status of their population by harmonizing policies and investment plans, including trade, food and agricultural policies.
- States may establish AYUSH dietary standards to promote healthy dietary practices by ensuring the availability of healthy, nutritious, safe and affordable food items in primary schools, schools and other public institutions.
- State governments can stimulate consumer demand for healthy foods and meals through the following:
  - To promote consumer awareness about traditional healthy diet based on AYUSH principles.
  - Develop school policies and programmes that encourage students to adopt a healthy diet and maintain health.
  - Educating children,adolescents and adults about nutrition and healthy dietary practices.
    - To encourage culinary skills in children through schools.
    - To provide AYUSH-based nutrition and dietary counseling at primary healthcare facilities.

Role of AYUSH in Convergence Platforms to Improve Nutritional Status

The Ministry of AYUSH is an associate ministry of Ministry of Women and Child Development since inception of the POSHAN Abhiyaan. The Ministry actively participates in various IEC activities under the POSHAN Abhiyaanprogramme with the help of State AYUSH Departments and National Institutes/Research Councils under it. In addition, the Ministry of AYUSH and Ministry of Women and Child Development have signed an MoU on September 20, 2020 to work together to control the menace of malnutrition through integration of AYUSH practices with on-going nutritional therapies. Specific areas identified for collaboration include: (1) integration of AYUSH into the nutrition campaign and (2) control of malnutrition through principles and practices of Ayurveda, Yoga and other AYUSH systems. The Ministry of AYUSH is promoting an AYUSH-based diet and lifestyle and is working closely with the Ministry of Women and Child Development in the POSHAN Abhiyaan to achieve the ultimate goal of 'Suposhit Bharat' (well-nourished India). The Ministry of AYUSH is also working for the introduction of AYUSH-based nutrition or "nutritional supplements" in Nutrition 2.0. Due to cultural and geographical variation across states, there is a need for a comprehensive approach to tackle malnutrition.

A system that promotes health is the hallmark of AYUSH medical science; specific dietary and lifestyle guidelines are prescribed for individuals, along with drugs and therapies to facilitate homeostatic bio-mechanisms and health. Ayurveda and other AYUSH systems describe various diets in detail, including well-discussedmeasures for health promotion, disease prevention, and for the management of diseases are also determined, which address diverse needs such as conditions of disease and different age groups. The AYUSH-based nutritional support system explains the benefits of Ayurveda in ensuring holistic nutrition and recommends AYUSH systems for fighting anemia, improving immunity, treating lifestyle disorders and malnutrition. There is a wide range of AYUSH interventions to supplement nutrition and to create awareness in the community about tradition-based AYUSH food recipes, which not only help in getting rid of diseases but also help in prevention of many disease conditions. The inclusion of AYUSH dietary principles, products and practices in India's nutrition programme will certainly help in improving the nutritional status of the population, health promotion and prevention of various nutritional deficiency diseases and diet-related non-contagious diseases.

References:

1. *Ayush Dietary Advisory for Kuposhan Mukt Bharat*, Ministry of Ayush, Government of India
2. *Role of Ahara in Promotion of Health*, Dr. Lalita Sharma, CCRAS, Ministry of Ayush
3. *Role of Ayurveda in Promoting Maternal and Child Health*, Smita Bajpai, July 2008 Ancient Science of Life 28(1):16-20, Source PubMed
4. *Ayurveda-based Nutritional Counsel—A Holistic way of Health Promotion*, Srikanth Narayanam, Babu Ramesh, December 2012
5. *Ayurvedic approach to pathya (ideal diet planning)—an appraisal*, Sulochana Bhat, G S Lavekar, PMID: 17333670
6. *An Ayurvedic Review on Ashta Ahara Vidhi Vishesh Ayatana, Namrata Sahu*, Vinay Bhardwaj, Gitanjali Sasmal, International Ayurvedic Medical Journal, India 2021, ISSN: 2320-5091
7. *Bioavailability of Nutrients*, Hettie Schonfeldt, Beulah Pretorius, Nicolette Hall, December 2016, DOI:10.1016/ B978-0-12-384947-2.00068-4
8. *Physiological aspects of Agni*, Akash Kumar Agrawal, C. R. Yadav and M. S. Meena, Ayu. 2010 Jul-Sep; 31(3): 395–398, doi: 10.4103/0974-8520.77159, PMC3221079, PMID: 22131747
9. *Exploring Ayurvedic Knowledge on Food and Health for Providing Innovative Solutions to Contemporary Healthcare*, Unnikrishnan Payyappallimana, Padma Venkatasubramanian, Front Public Health. 2016; 4: 57, doi: 10.3389/ fpubh.2016.00057, PMCID: PMC4815005, PMID: 27066472
10. *Ayush for Immunity*, Vol.1, Issue 4
11. *Ayush System—A focus on core achievements and potential areas for Intra-Ayush collaboration*, CCRAS, Ministry of Ayush

Alok Kumar

Some Reflections on Article 48

Like many other provisions, our ban on cow slaughter too is full of discordance. A critical look on the legislations with a perspective of ground realities

The Vedas proclaim, '*Gāvo Viśvasya Mātaraḥ*'; meaning Cow is the mother of the Universe. The Sanskrit literature, the Vedas, Puranas and other texts are full of worshipful prayers for the Cow. The following shloka from Skand Puran is illustrative:

"*Twam mātā sarwadevānā twam ca yajñasya kāraṇam|*
Twam tīrth sarvatīrthānāṃ namaste'tu sadānadhe||"

Meaning: *O Destroyer of sins! You are the mother of all Deities. You are the reason for yajña (sacrificial fire). Among all Tirthas (Holy places), you are the holiest. I pay my obeisance to you.]*

It is verily believed that all the *devtas (Dities)* reside in the body of the Cow. The four Vedas are established in the mouth of the Cow, *Kartikeya* in the abdomen, *Rudra* in the forehead, *Indra* in the horns, *Ashwani Kumar* in the ears, son & moon in the eyes, *Garuda* in the teeth and *Saraswati* in the tongue and so on. Even the Cow dung is considered holy and is the abode of Goddess *Lakshmi*. Therefore, the service and worship of the Cow amounts to offering service to all the divine bodies.

One of the "most popular of all Hindu Gods, Krishna has been widely loved, cherished, painted and sung of in his role as a protector of cows – a cow herder living amongst pastoral villages." (Lodrick D. O. in Sacred Cows, Sacred Places).

The killing of Cow is a sinful act and is also punishable. T*he Atharva Veda* (1/16/4) says: "If thou destroy a cow of ours, a human being, or a steed, we pierce thee with this piece of lead so that thou may not slay our men."

Kamadhenu

There is a famous mythological history of the Devas and the Demons joining together to obtain the *Amrut*, the milk of immortality. They were advised that this *Amrut* can be obtained by the churning of the *Ksheersagar* (ocean of milk). The further advice was that many precious gifts including goddesses, trees, elephant, poisons and *Kamdhenu* would emerge from the churning but they should be gifted to some worthy person immediately and the churning to continue for the *Amrut* to appear.

Meru, the mountain with a very high peak agreed to be the Mathani (stand mixer) and the *Sheshnaga* to be the rope. Devas held the rope from one side and the Demons on the other side. In the churning, the first to emerge was the poison called *Kalkoot* enough to destroy the humanity. To save the earth *Shiva*

drank it and held it in his throat.

One of the important outcome of the churning was '*Kamdhenu*', the mother of all cows. *Kamdhenu* fulfils all the righteous desires of the devotees. The *Kamdhenu* was gifted to Sage *Vashishtha*.

The Cow is the mother; the Bull is *Nandi*, the vehicle of Lord Shiva and both are worshipped by the Hindus from the *Vedic* times till today.

Muslim Rule

During the time of Atal Ji's Prime Ministership, a National Commission on Cattle was constituted. The Commission studied the issue of Cow Protection and had submitted a detailed report (**Lodha Committee Report**). Justice Shri Guman Mal Lodha (Retd), who was later the Acting Chairman of the Commission has written a detailed introduction to the report.

Shri Lodha has noticed, "Cow slaughter in India first started around 1000 A.D, when various Islamic invaders came to this country from Turkey, Iran (Persia), Arabia and Afghanistan. According to Islamic traditions in Arab countries they used to kill and sacrifice goats and sheep. On special occasions they used to sacrifice camels. However, the Islamic rulers, from Central and West Asia were not habituated to beef-eating, as there were no cows in Arabic countries in those days. When the invaders came to India, they started sacrificing cows, especially on the occasion of Bakri-Id. This was done more to humiliate the natives of this country and establish their sovereignty and superiority rather than for food purposes. This practice resulted in discontentment amongst the native Hindu population of this country, who felt offended and hurt" (Para 25 of the introduction)

As stated, Cow was revered as mother by Hindus. It became a rallying point between the Muslim invaders and the Indian communities. The resistance to Cow slaughter had a massive impact which forced even the Muslim kings like the Babur, Jehangir, Akbar, Mohammad Shah and Shah Alam to forbid the Cow slaughter in their kingdoms.

The Lodha Committee Report was presented to Parliament and discussed. Speaking on the Report Shri Guman Mal Lodha in his speech of May 18, 1990 said that, "even the Prophet Mohammad has said that Cow-milk is the best for good health. According to him *ghee* is a medicine and beef is a disease." Shri Lodha also quoted Mahatma Gandhi to say that "There was no difference between killing a men and slaughtering a cow. These are two sides of same coin."

British Rule and the Freedom Struggle

The Lodha Committee has reported in Para 27 and 28 of the introduction:

"However, in the early part of the 19th century, with the advent of British rule in India, a new situation was created with the arrival of the Europeans, who were habitual beef-eaters. In the

Courtesy: https://www.oneindia.com/india/law-on-anti-cow-slaughter-in-karnataka-to-be-delayed-3187957.html

Novel "What is to be done" by "N.G. Chernyshevsky (English Edition Vintage 1961), the author speaks of how the Russian people were of the belief that beef gives great strength and stamina to human beings. For over 2000 years, Europe had been a major consumer of the flesh of the cow. Naturally, therefore the killing of the cow in India by Europeans, especially the British, increased soon after they began to establish themselves in various parts of India in the early 19th century. To begin with the number of cows killed was not noticeable and escaped attention. But by the end of the 19th century such killing had assumed large proportions and a large number of slaughter houses on the Western pattern were set up in various parts of India by the Commissariat Wing of the three British armies (of Bengal, Madras and Bombay Presidencies). To do such killing, a large number of slaughterers had to be found. As the Hindus declined the job, the converted Indian Christians and Muslims butchers were utilized for the slaughter of cows.

"A modest estimate by Lala Hardev Sahay of Haryana (Biography - 1995 pp 105) was that the maximum number of cows killed in any single year, during Islamic Rule, would not have exceeded 20,000 cows. In contrast, the Father of the Nation, Mahatma Gandhi, stated in a speech given in Muzaffarpur in 1917, that 30,000 cows were slaughtered daily (1 crore 10 lakhs annually) by the British (CMMG 14, page-80)"

The issue of beef and pork lead to the first war of independence against the British in 1857. The British Govt. had introduced a new rifle in 1853. To load the rifle soldiers had to bite the cartridge, open and pour the gunpowder. Many sepoys believed that the cartridges that were standard issue with the new rifle were greased with lard (pork fat) and tallow (cow fat) which angered both communities and together they fought for driving away the British.

Mahatma Gandhi has said in *Hind Swaraj*, about cow protection. "Just as I respect the cow so do I respect my fellow-men. A man is just as useful as a cow, no matter whether he be a Mohammedan or a Hindu. Am I then to fight with or kill a Mohammedan in order to save a cow?…Therefore, the only method I know of protecting the cow is that I should approach my Mohammedan brother and urge him for the sake of the country to join me in protecting her. If he should not listen to me, I should let the cow go for the simple reason that the matter is beyond my ability. If I were overfull of pity for the cow, I should sacrifice my life to save her, but not take my brother's. This, I hold, is the law of the religion."

The matter of cow protection has consistently been at the centre of the freedom struggle. Mahatma Gandhi cautioned, "I do not want *swaraj* in India where the cow is being killed." In December, 1927, Mahatma Gandhi said, "As for me, not even to win Swaraj, will I renounce my principle of cow protection?"

Debates in the Constituent Assembly

Article 48 of the Indian Constitution reads, "The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught animals."

It is immediately noticed that the prohibition on slaughter of cow appears virtually as a footnote in the Article. Also, this Article instead of getting the place in fundamental rights has been put in directive principles, which is not mandatory to comply with.

The campaign for a ban on cow slaughter was further diluted and made difficult by putting this issue in List II of the Constitution i.e. the State List. Now it is for the States to make a law or not on the issue of cow protection.

This evasive and apologetic stand was chided by Shri Frank Anthony in his speech before the Constituent Assembly:

"Mr. Frank Anthony: While on the matter of Directive Principles, I would like to refer to this provision regarding cow slaughter. I know, again, here, that I will be treading on difficult ground. But, I want to make my position clear. What I resent in this Directive Principle is the insidious way in which this provision with regard to the banning of cow slaughter has been brought in. It was not there before. I cannot help saying that those fanatics and extremists who could not bring in this provision through the front door have succeeded in bringing it through the back-door. Sir, I am not a beef eater; I am not holding a brief for beef eaters. I say, you may ban cow-slaughter, but we should have done it honestly without our tongues in

our cheeks, without resorting to methods which may give rise to the accusation of subterfuge. I ask my Hindu friends, does cow-slaughter offend you religious susceptibilities.

Shri K. Hanumanthaiya: (Mysore State): Yes; it does.

Mr. Frank Anthony: All right; I am glad you have said so. If you had said that, I would have sponsored a provision that a ban on cow-slaughter should been introduced in the Fundamental Rights and that cow-slaughter should be made a cognisable offence. But, there were not people who were prepared to do that. Why bring in this provision in an indirect way? If it offends your religious susceptibilities, just as much as I expect you to respect my religious susceptibilities, I am prepared to respect yours. As I said, why bring it in, in this indirect way, as an afterthought into the Directive Principles? Look at the way you have brought it in."

The above can be understood from the debates before Constituent Assembly. The debates reveal that initially a forceful attempt was made for inclusion of a total ban on slaughter of cow and its progeny in the Chapter on Fundamental Rights. This is evident from the speeches made by Pandit Thakur Dass Bhargava, Seth Govind Das and Prof. Shibban Lal Saksena as extracted below. However, unfortunately the then leaders of the Indian National Congress (as also the leaders of Congress (I) today) continued to be opposed to the Hindu sentiments in the name of what they profess – pseudo secularism.

Pt. Thakur Dass Bhargava said, "Mr. Vice-President, with regard to this amendment I would like to submit before the House that in fact this amendment like the other amendment, about which Dr. Ambedkar has stated, is his manufacture...While moving this amendment, I have no hesitation in stating that for people like me and those that do not agree with the point of view of Dr. Ambedkar and others, this entails, in a way, a sort of sacrifice…To my mind, it would have been much better if this could have been incorporated in the Fundamental Rights, but some of my Assembly friends differed and it is the desire of Dr. Ambedkar that this matter, instead of being included in Fundamental Rights should be incorporated in the Directive Principles..."

The reservations of the Indian National Congress are writ large in Pr. 41 of the introduction of Lodha Committee Report. It reads, "In 1940, one of the Special Committees of the Indian National Congress opined that slaughter of cow and its progeny must be totally prohibited. However, strangely another Committee of the Congress opined that the skin and leather of cow and its progeny, which is fresh by slaughter, should be sold and exported to earn foreign exchange. It opined against cow slaughter prohibition. It was in pursuance of such unfortunate recommendations, as well as pressure from the leather lobby that, in 1950, an order was issued by the Government of India that the skin of dead cow fetches less value in comparison to the skin of the slaughtered cows. State Governments were, therefore, advised not to introduce total prohibition on cowslaughter."

Even as late as on 16.06.2017 Shri Jairam Ramesh a top leader of the Congress(I) said in an interview to Economic Times, "I am vegetarian and as minister of environment in 2009 publicly said that the best thing the world can do to reduce methane emissions is to stop eating beef."

"Yet, I don't believe in coercion. It is a lifestyle choice. If people want to eat beef let them eat. The state should not dictate what people should be doing in their personal domain. Surely, we have better things to discuss than cow slaughter at a time when we have a jobs famine. To be discussing beef when the economy is decelerating is bizarre. It is all part of an orchestrated campaign to keep society polarised. It suits the ruling establishment."

Campaigns for Cow Protection, the Role of RSS and VHP

After the first general elections, the Rashtriya Swayamsevak Sangh (RSS) in its meeting on 9–10 September, 1952 resolved to launch a signature campaign for a law on a total ban on the slaughter of cow and its progeny. The campaign started on 26.10.1952 and continued for a month. During this period, public meetings were held at more than 50,000 places. 1,75,73,226 adult citizens of India signed the petition for a total ban on cow slaughter. They included 3,22,969 Muslims and 60,569 Christians. The signatures were handed over to Dr. Rajendra Prasad the Hon'ble President of India on 08.12.1952.

Regrettably, the Govt. of India did not act upon the demand for a legislative ban on cow slaughter.

The Vishva Hindu Parishad

(VHP) was born on 29.08.1964. The VHP held the first Vishva Hindu Sammelan in January, 1966. The Sammelan called upon the Govt. of India for a legislative ban on a killing of cow and its progeny. The Gopashtmi fell on 7.11.1966. This day was observed as Cow Protection Day. The movement for cow protection was lead by Sarvdaliya Go Raksha Mahabhiyan Samiti (**Samiti**).

A huge procession was taken out on 7th November 1966 in front of the Parliament House under the leadership of the Samiti. The leaders included Reverred Swami Karpatri Ji Maharaj, the Shankaracharyas of Jagannath Puri, Jyotish Peeth and Dwarka. Pithadhipatis of Vallabh Sampradaya, of Ramanuj Sampradaya, of Madhvacharya samparadaya, of Ramanandacharya Sampadaya, Arya Smaj, Nath Sampradays, Jains, Baudhs, Sikhs and Nihangs. All these religious heads, without their canopies and asans walked all the way to Parliament House. The participants included the Hindus from all denominations and the saints and mendicants.

The Indira Gandhi lead Govt. of India responded with indiscriminate firing on the peaceful assembly. According to one estimate some 5000 persons including the Sadhus were killed in the firing or by trampling down. The Prime Minister Indira Gandhi passed on the blame for this upon the Home Minister Shri Gulzari Lal Nanda who had to resign from his office.

Pujya Shankaracharya Shri Niranjan Dev Teerth and Pujya Prabhudatta Brahmachari started a fast unto death from 20.11.1966 for ban on cow slaughter. They were arrested. On 02.12.1966, Jain Muni Sushil Kumar also started such a fast. This created an unprecedented awareness and support for the demand of a ban on cow slaughter. Shri Guru Golwalkar of RSS and other senior leaders requested the fasting Saints to conclude their fast as the object of awareness was achieved. The Home Minister met Shri Karpatri Ji Maharaj and promised him that a law as desired shall be introduced and passed in the next session of parliament and requested to save the lives of the fasting leaders. Shri Prabhudatt Bhramachari concluded his fast on 30.01.1967 and Pujya Shankaracharya Ji on 31.01.1967.

The movement was revived and Gauseva Mahabhiyan Samiti was formed as a joint front of all organisations and individuals committed to this cause. The VHP decided to expand the scope of its work by adding *Gopalan* and *Gosamvardhan* with the demand of *Goraksha*. The Samiti continued its work and motivated the *Gaushalas* to start projects for the use of *Panchagavya* viz milk, curd, ghee, cow dung and urine. The cow products including the manure, pesticides and medicines were encouraged. The Bajrang Dal in its meeting of 21.01.1996 resolved to take active steps across the country to work for the protection of the cow including by intercepting the persons unlawfully transporting them for slaughter.

On the demand of VHP made to the Government and individually to some 450 MPs, the Modi Govt. has in 2019 formed a commission called Rashtriya Kamdhenu Ayog as a high powered permanent apex advisory body with the mandate to help the Central Govt. to develop appropriate programs for conservation, sustainable development and genetic up gradation of indigenous breed of cows.

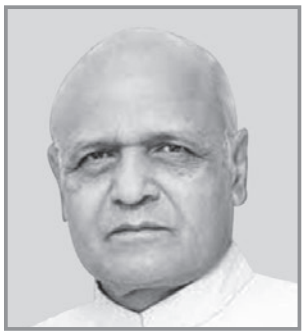
The VHP had also impressed upon the Govt. that animal husbandry and dairying should be separated from the Ministry of Agriculture so that proper care and emphasis can be given to these subjects. The Govt. has accepted the said demand also and has formed a separate ministry for Animal Husbandry, Dairying and Fisheries.

It is a matter of satisfaction that there is now an increasing demand for the cow milk and its products. The people, while ordering for cow milk do enquire if the supplies are the milk of a *Desi* Cow. The medicines, manure, pesticides, Gobar Gas, cow dung cakes for Havan and cremation and such other products are becoming popular.

It is further a matter of satisfaction that Cow protection laws have been enacted in most parts of the Country; the only remaining exceptions are Kerala and the North-Eastern States of Arunachal Pradesh, Meghalaya, Nagaland, Sikkim, Tripura, Manipur and Mizoram. However, the biggest North-Eastern State of Assam is vigorously pursuing the law for protection of cow.

We look forward for a time, not in distant future, when the cow slaughter will be banned in the remaining states also and the compassionate cow along with its *panchgavaya* will shower health, nourishment and prosperity upon the children of Bharat Mata.

Constitutional Mandate for Preserving Heritage



Prof. Bhagwati Prakash

It is inevitable for a civilization to preserve its heritage for its future generations. An account of our heritage in light of Constitutional provisions

India is an ancient civilisation endowed with rich historical, civilisational and cultural heritage. This richness is visible in the archaeological sites, monuments, landscapes, artifacts, and legends of historical value, comprising its ancient history, civilisational antiquities, languages, scripts, music, festivals, dances, social practices, customs, arts, artifacts, scriptures, epigraphs, manuscripts and advanced ancient wisdom[1].

National Heritage and Duties of the State and Citizens

Indian Constitution explicitly casts definite responsibility on the State to protect and conserve nation's heritage under the Directive Principles of State policy. Article 49 of the Directive Principles states Policy, "It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, (declared by or under law made by Parliament) to be of national importance, from spoliation, disfigurement, destruction, removal disposal or export, as the case may be."[2] In addition to this the Article 51 A (f) widens the responsibility and directs every citizen to contribute to heritage preservation. It states that "it shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture; and under 51 A (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."[3] The Directive Principles of State Policy appear to have been borrowed from the Constitution of Ireland,[4] which in turn had copied them from the Spanish Constitution.[5] These Directive Principles have their immediate origin form the Sapru Committee Recommendations of 1945, which suggested two categories of individual rights: (i) justiciable and (ii) non- justiciable rights.[6] The justiciable rights, as we know are the Fundamental Rights, whereas the non-justiciable ones are the Directive Principles of State Policy (DPSP) incorporated in the Constitution.[7]

Directive Principles

The DPSP are ideals which are meant to be kept in view by the State when it formulates policies and enacts laws. They are an 'instrument of instructions' which were also enumerated in the Government of India Act of 1935 as well. There are multiple objectives of the Directive Principles of State which are given blow:

- They seek to establish economic and social democracy in the

country.

- They are ideals but not legally enforceable by the courts for their violation.
- These are guidelines for government and based on principles of welfare of citizens
- These are the Principles of village self Rule, mostly inherited from ancient Hindu Scriptures of Raj – Dharm
- They are Liberal and intellectual Principles of governance.

Origin of Directive Principles in Sapru Committee Report

The Sparu Committee Sapru Report incorporating mention of the Directive Principles as nonjusticiable right was published in 1945 and was set up to resolve issues pertaining to minorities that HAD PLAGUED Indian political and constitutional discourse[8]. It was prepared by a committee appointed by the Non-party Conference in November 1944. This group consisted of individuals who represented a variety of interests except those of the dominant political parities which were the Indian National Congress, Muslim League and the Communist Party.

The Sapru Committee and Its Background

In the early 1940s,the political scenario was marred by communal strife out of the conflict and impasse between the Congress and Muslim league over the constitutional future of India and the separatist demand of the certain sections of Indian Muslims. The Gandhi – Jinnah talks of 1944 had failed so, to overcome the communal tensions and problem, the Non-Party Conference set up a 30 member committee with Tej Bahadur Sapru as its Chairman. The Committee was assigned, among other issues to examine the whole communal and minorities question from a future constitutional and political point of view. The 343 pages Report was contained detailed expositions on various aspects of India's constitutional future. The Report rejected the Muslim League's demand for Pakistan. The committee held that a separate Muslim state would not be advantageous to any community and felt that the division of India would 'endanger the peace, tranquility and progress of the whole country'. It called for the setting up of a constitution – making body, in which Muslims also were recommended to be included.

The Report had a section on fundamental rights like: freedom of speech, freedom of press, religious freedom and equality. In the explanatory sections the Committee asserted for dividing the rights into justifiable and non- justifiable. This Report was a prelude for setting up of the Constituent Assembly and had an indirect influence on the constitution- making process as eight members of Sapru Committee went on to become the members of the Constituent Assembly as well. These included: M. R. Jayakar, Gopalaswami Ayyagar, John Mathai, Frank Anthony and Sachidananda Sinha- who become the first (provisional) chairman of the Constituent Assembly. However the Constituent Assembly continued with same legacy of minorities, when the country was partitioned and the constitution should not have been at all plagued by minorityism. In light of the above discussions and mandate under article 49 and 51(f) the heritage and cultural history of the country should be protected with getting plagued from minority's m and psnedo-secularist propaganda.

Judicial Directive

Supreme Court has also held on several occasions that preservation of rich heritage and culture of the country in several cases. On 3 February, 2015 a bench of the Supreme Court comprising of Justice T. S Thakur and Justice Adarsh Kumar Goel emphatically held that preservation of rich heritage and culture of the country is a constitutional mandate. Hearing a writ petition filed by Subhas Datta as a public interest litigation under Article 32 of the Constitution, the Supreme Court took a serious note of the submissions made by the petitioner about the concerned agencies, which are running and managing museums, to the effect that the security and maintenance of historic artifacts requires serious and continuous efforts by technically trained persons. The court also noted the challenges pointed out in this regard , such as space constraints , manpower shortage and lack of other resources ,that need to be looked into by the Ministry of Culture and other concerned authorities, and also the appropriate monitoring mechanism that ought to have been put in place. The court also took note of the fact that requisite funds have to be allocated for the purpose. The petition had been field in the year 2004 on the issue of protection of historical objects preserved at different places in the country[9].

History and Culture Integral To The Monuments

The historical monuments etc mandated to be protected under Article 49 have a historical past constituting unique cultural and civilisational antiquities of national and even universal significance. For instance, the Hampi, protected by the "Hampi, World Heritage Area Management Authority Act 2002" represents Ramayan era heritage, which hasvivid and live historical and cultural links with Ram Janmbhoomi in Ayodhya, Ram Setu and Rameshwarm in Tamil nadu and Several other places mentioned in Ramayan, including Chitrakoot. The Scriptural descriptions in the epic Ramayan also become equally important. The mention of 4 tusked elephants[10] in Valmiki Ramayan corroborates the belief that the Ramayan period falls in the Treta Yug, elapsed almost a million years ago (exactly 8,69,124 years). According to archeologists the 4 tasked elephants had become extinct a million year ago. Likewise 'the heritage of the archeological remains of the ancient Dwarika found under the sea water, also goes back to five millennia as per radio carbon dating and Mahabharat era antiquity of Dwarika has links with hundreds of places of Mahabharat, including the Mathura, Kurukshetra, Dankore, Gurugarm, Jagannath Puri and so on. So, resurrecting their historical account along with the physical structure and their historical as well as cultural legends, described in their epical descriptions is equally important. There are several thousand places and their epical legends which need to beresurrected and preserved, documented and be taught along with this monuments in the educational institutions. It is a clear constitutional mandate, to preserve the heritage and historical monuments with their scriptural description and it should not be ignored in the name of psuedo secularism.

References:

1. City heritage and flawed strategies| ORF www.orfoniline .orghttp://www.orfonline.org/ expert -speak/city -heritage -and-flawed-strategies/
2. National Portal of India Article 49, Constitution of India, https://www.india.gov.in/my-government/constitution-india
3. National Portal of India Article 51 A, Constitution of India https://www.india.gov.in/my-government/constitution-india
4. Directive Principles of State Policy(DPSP) Under the Indian Constitution https://blog.ipleaders.in/directive-principles-of-state-policy-dpsp-under-the-indian-constitution
5. ibid 4
6. Constitution of Indiahttps://www.constitutionofindia.net/historical_constitutions/sapru_committee_report_sir_tej_bahadur_sapru_1945_1st%20December%201945
7. ibid 4
8. ibid 6
9. Preservation of rich heritage and culture is a constitutional mandate, says...https://tilamarg.com/news/preservation-of-rich-hiritage-and-culture-is-a-constitutional-mandate-says-supreme-court/
10. Valmiki Ramayan, Sunder Kand-4.27.12; 5.4.26-28; 5.9, 4-5

Dr. Vishwesh Vagmi

Directive Principles of Indian Constitution in the Light of Sanātana Principles A Contemplation

Our Constitution, though, focuses on the spirit of Welfare State. Yet it is too far from its goal even after 70 years of independence. Is it because of the deviance from the roots of our culture? An analysis

The makers of the Constitution have considered the Directive Principles of State Policy incorporated in Part-4 of the Indian Constitution as the fundamental basis of governance and have enjoined upon the State the duty of of implementing these in law-making. In the Constituent Assembly, Dr. Bhimrao Ambedkar had said that in the future, the legislature and the executive should not merely express oral sympathy towards the elements enacted in this part of the Constitution, but should also make them the basis of all those functions of the executive and legislature that would followed in the matters of governance of the country.[1] The Directive Principles in this form is that significant part of the Indian Constitution through which the Constitution seeks to achieve the ideal of a welfare state; a state capable of creating equitable social systems free of social, economic and political inequalities. But even after 70 years of the Constitution coming into force, the goal of a public welfare state as desired by the framers of the constitution quite far off. One of the important reasons for this seems to be that while incorporating these Directive Principles in the Constitution, the ideals, values and problems of Indian life have been neglected—knowingly or unknowingly—by the country's constitution makers influenced by Western political systems.

In relation to the Directive Principles, it is well known that these principles have been drawn from the Constitution of Ireland. Ireland itself had also adopted these principles from the Constitution of Spain. Upon closer scrutiny, it becomes apparent that the core idea and philosophy of the Directive Principles is inherent in the French idea of human rights, the American Declaration of Independence, and the liberal and socialist philosophies of the 19thcentury. It is a matter of great irony that a nation whose vast literature is replete with directive principles; which has the oldest and greatest heritage of ethics and possesses a scientific and endless, eternal tradition of ideals of public welfare,when obtaining the opportunity to make its supreme law after being freed of slavery of a thousand years, did not come across a single such principle nor ideal from its eternal traditions which it could incorporate into the Directive Principles of its Constitution. Not only that, even after so many years

of independence, our analytical intellect still does not try to look at these guiding principles in the light of Indian Sanātana tradition.

Pt. Deendayal Upadhyaya, the articulator of the philosophy of Integral Humanism and upholder of the Indian tradition of knowledge, constantly alerted the then policymakers about this issue. Through his speeches, articles and proposals throughout his life, he always endeavoured that the soul of India must be kept intact while framing laws. Only the realisation of India's *chiti* or 'self' can solve India's problems. Even if a small measure of success is achieved by chance in a particular field through adherence to Western ideas and ways, its outcome cannot be beneficial for us. We would be more inclined towards imitation; due to which the feeling of the loss of our self would gnaw the roots of the entire nation. We therefore, have to find lasting and all-encompassing solutions in every field of governance with the help of fundamental Indian principles. No matter how scientific the theories of the West may be; they are not totally suited to our nation due to the ideals of Indian life, its problems and issues and the different circumstances of the land and its times. The ultimate solution to Indian problems is possible only through Indian principles.

Today the people of India are experiencing the truth of these ideas of Pt. Deendayal Upadhyaya. In the Indian intellectual world too, realisation regarding the failures of Western principles and faith in Sanātana principles is growing stronger. Therefore, it is the duty of all of us today to make Sanātana principles, which are capable of establishing compatibility with the contemporary needs of the country, the subject of our study and research in every field. In spite of being contemporary and eternal, one that is endowed with the ability to manifest eternally, is in actuality, Sanātana. The sages of the Atharvaveda while explaining the word Sanātana say:

Sanātanamenamāhurutādya
Syāt Punarṇavaḥ|
Ahorātre Prajāyete Anyo
Anyasya Rūpayoḥ||[2]

Meaning, just as the cycle of day and night remains eternal, providing new energy, enthusiasm and zeal every day, Sanātana is the one which despite being ever-present and eternal, is constantly new in accordance with the times.

Keeping this outlook in mind in the present article, a humble attempt has been made to view certain references of Directive Principles mentioned in the Constitution of India in the light of Sanātana Indian principles, upon which the entire Indian social, economic and political thought based on dharma, rests.

Article 38 of the Constitution, while clarifying the concept of a public welfare state, says that the state should create a social order by eradicating social, economic and political inequality. It is public welfare that is the highest goal of the Sanātana Indian way of governance. The references to politics and statecraft contained in the Vedas, Smritis, Purāṇas, epics and philosophical texts consider public welfare as the highest duty of the king. No matter what the system of governance was in ancient India; in the Sanātana concept of politics, *Rājadharma* occupies

a higher place than the ruler himself. The king is considered merely the protector, conductor and servant of this dharma, whose responsibility is to adhere to and ensure adherence of this dharma and to prevent its violation. According to *Rājadharma*, there are three main duties of the king: 1) To protect the citizens, 2) To establish civility among the citizens by following equable justice and dharma and 3) To bring about economic progress of the nation for the sustenance and enhancement of the citizens. Due to these three attributes of *Rājadharma*, the king has been considered as a father in the true sense:

Prajānām Vinayādhānādrakṣh aṇādbharaṇādapi|
Sa Pitā Pitarastāsāṃ Kewalaṃ Janmahetawaḥ||[3]

This responsibility of the pursuit of people's welfare does not permit the ruler to rest. That is why King Dushyanta's chamber-attendant, proclaiming "***Aviṣramoyam Loktantrādhikāraḥ***"[4] (the right of the people cannot wait) dares to disturb the king's resting hour. The ruler exacts tax from the ruled, and therefore like the sun, air and Sheshnag (the mighty serpent upon which Vishnu, the Sustainer of Creation rests), he too does not have the right to take leave of his duties. He cannot be free of the responsibility of the people's welfare.

Bhānuḥ Sakṛdyuktaturanga Eva Rātrindivam Gandhavaḥ Prayāti|
Sheṣaḥ Sadaivāhitabhūmibhāraḥ Ṣaṣṭhanśavṛtterapi Dharma Eṣaḥ||[5]

Almost every Sanskrit playwright in his work implores the kings to be constantly engaged in the welfare of the subjects, saying: ***Pravartatām Prakṛtihitāya Pārthivaḥ***[6] (May the temporal one, i.e., the earthly ruler) be engaged in the good of the realm). In the Sanātana Indian tradition, every individual from the king to one occupying the lowest ranks has been reciting the following verse in his prayer since time immemorial; in which it is said: Rulers should tend the earth by adhering to the path of justice. May people's welfare be attained. May the cows and brahmins always be well and may all people be happy.

Swasti prajābhyaḥ paripālayantām nyāyyena mārgeṇa mahīm mahīshāḥ|
Gobrāhmaṇebhyaḥ śubhamastu nityam lokāḥ samastāḥ sukhino bhavantu||

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In the *Mahābhārata*, the main purpose of appointing a king has been stated as "good of the people" and "ruling the people"— "***Lokarañjanamevātra rājñām dharmaḥ sanātanaḥ***[7]. Just as a pregnant woman sacrifices her desires to take care of the welfare of her unborn child, the ruler should be engaged in the interest of his subjects without worrying about his personal happiness.

Yathā hi garbhiṇī hitvā swam priyam manasonugam|
Garbhasya hitamādhatte tathā rājñāpyasanśayam||
Vartitavyam Kuruśreṣṭha nityam dharmānusāriṇā|
Swam priyam tu parityajya yallokahitam bhavet||

Governance of the people is the foremost priority for Shri Rama (also known as Maryada Purushottama), the founder of Ramarajya, the highest ideal of Indian rājadharma. For this he does not hesitate to give up all his pleasures, including his beloved Janaki (Sita).

Sneham dayām ca saukhyam ca yadi vā Jānakīmapi|
Ārādhanāya lokasya muñchato nāsti me vyathā||[8]

What better example can be there of a ruler's sense of duty towards his subjects than this? 165 years before Christ, Emperor Kharavela of Kalinga had declared that he governed the 25 lakh subjects of his kingdom.[9] Kautilya has held that the happiness of the ruler lies only in the happiness of the subjects and the interest of the state lies in the interest and well-being of its citizens.

Prajāsukhe sukham rājyam rājñaḥ prajānām tu hite hitam|
Nātmapriyam hitam rājñaḥ prajānām tu priyam hitam||[10]

The Sanātana approach to taxation is also based on these eternal values. The only goal of

the principles of taxation which have been propounded in the scriptures ranging from the Vedic *samhitās* to the *Arthaśāstra, Manusmriti* etc., is the welfare of the people. According to the Vedic samhitās, only a king who drawstaxfromhis subjects in a just way is capable of promoting the well-being of all –*Viśaścakre Balihṛtaḥ*[11].

With regard to taxation, the following principle of *ViduraNīti* can be a guide of the entire Indian tax system: just as the bee sucks the juice of flowers without harming them, similarly the king too should obtain revenue in the form of tax from his subjects in a way that it does not hurt them.

Yathā madhu samādatte
rakṣhan puṣhpāṇi ṣhaṭpadaḥ|
Tadvadarthānmanuṣyebhyaḥ
ādadhādavihinsayā||[12]

In this regard, the great poet Kalidas, presenting the eternal ideal of *rājadharma* through King Dileep, has stated: "Just as the sun receives water from the earth through its rays and enhancing it a thousand times rains for the welfare of the earth, similarly, whatever the Sūryavanshī king Dileep used to do exact from the subjects in the form of tax, he would again utilise the same in their welfare".

Prajānāmeva bhūtyartham sa
tābhyo Balimagrahīt|
Sahasraguṇamutsraṣṭumādatte
hi rasam Raviḥ||[13]

The illustrious saint-poet Tulsidas too, has laid down this ideal in relation to taxation. The sun draws water from the earth without anyone being aware of it, but when it pours the same water in the form of rain, all the denizens come to know of it and they erupt in joy. A king too should collect taxes in the same way

Barsat harkhat log sab,
karkhat lakhai na koi|
Tulsi praja subhag te, bhoop
Bhanu so hoi||[14]

Thus, the only goal of the eternal principles of politics is the welfare of the people, which has only one mantra —rājadharma. It is only by this that the all-round progress of the people is possible. It has been said in the *Mahābhārata* that all sacrifices are manifest in rājadharma; all initiations are rendered in it rājadharma; the yoga of all knowledge is also possible in rājadharma and the refuge of all the world is also rājadharma.

Sarve tyāgāḥ rājadharmeṣu
dṛṣṭāḥ, sarvāḥ dīkṣhāḥ
rājadharmeṣu coktāḥ|
Sarvā vidyā rājadharmeṣu
yuktāḥ, sarve lokāḥ
rājadharmeṣu praviṣṭāḥ||[15]

Article 41 directs that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, disease and disablement and other disqualified deprivation.

According to Article 42, the State shall make provisions for securing just and humane conditions of work and for maternity aid.

Article 43 directs the State to make efforts with respect to the subsistence wages and enjoyment of leave etc., for all types of workers.

In Kautilya's *Arthaśāstra*, almost all issues mentioned in the above three paragraphs have been included in the description of the provisions related to wages and labourers. In this treatise, it has been considered the duty of the state to provide just and humane conditions for working. According to Kautilya, the state should spend one-fourth of its revenue on wages within the limits of its economic capacity. A very comprehensive list of functionaries in both state and society has been mentioned n the *Arthaśāstra*, from the *ṛvik* (performers of religious ceremonies), *ācārya* (preceptor), *mantrī* (minister), *purohit* (priest), *rājmātā* (queen-mother), *patrānī* (chief queen), *sainik* (soldier), engineer, artist, player, writer, *kuśīlava* (street performer, dancer, singer), doctor, protector of cows, washerman, barber, grocer, etc., to the *Vedādhyāyī* (students of the Vedas); it is the duty of the state to pay wages to themin accordance with their merit. Not only this, if an employee dies while working, Kautilya has laid

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down a provision to deliver the deceased's salary to his wife and children. The state has also been directed to provide financial assistance on the occasion of death, illness or birth of children at the home of its employees. According to Kautilya, even if there is a depreciation in the treasury due to any reason, it is the duty of the king to make arrangements for the payment of minimum wages through cattle, land or gold[16].

Kautilya also makes provision for necessary leave between work. Casual leave is the right of the worker. The owner should make proper arrangements for the same. If the owner violates the rules of wages once fixed, then it is the duty of the state to impose punishment on him. Kautilya does not talk about difference in wages on the basis of gender or caste. The provisions specified in Article 39 specifically mention that all citizens, male and female, shall have an adequate means of livelihood and equal pay for equal work. Kautilya also does not like any kind of discrimination in the fixed wage for equal work. At the same time, he instructs that no owner can restrict the proper wage fixed at one place on the basis of a particular place at his will. If any kind of problem is created by the owner in paying the prescribed wage, then he is liable to punishment[17].

According to Article 46, the State shall promote the interests of the weaker sections and shall protect them from social injustice and all forms of exploitation.

According to the *Śāstras* (scriptures) of Sanātana Dharma, the prime objective of the powers that the state acquires by law is to ensure the safety of the deprived, exploited and weak. According to the *Mahabharata*, the Creator has created a powerful king only in order to protect the weak. The total well-being of the people is dependent on the state.

Durbalārtham balam sṛṣṭam
dhātrāmāndhātarucyate|
Abalam tu mahadbhūtam
yasmin sarvam pratiṣṭhitam||[18]

Kāmandak in his Nītisāra has also laid down very incisive guidelines regarding freedom from fear and exploitation of the citizens[19]. In both the *Mahābhārata* and the *Arthaśāstra*, the anarchical state has been strongly condemned. In such states, a situation of *matsya-nyāya* (bigger fish devouring the smaller one) arises due to the lack of strength of dharma. Just as a big fish gobbles up a small fish, in the absence of administration and law, the powerful destroy the weak.

Arājakeṣu rāṣṭreṣu dharmo na
vyavatiṣṭhate|
Parasparam ca khādanti
sarvathā dhigarājakam||
Rājā cenna bhavelloke
pṛthivyām daṇḍadhārakaḥ|
Jale matsyānivābhakṣyan
durbalam balavattarāḥ||[20]

In fact, the state did not interfere much in the matter of education, but when needed, used to take care of the responsibility of the total well-being of the Acharyas (teachers) who used to discharge the sacred work of imparting education. Kalidas has presented this subject in a very beautiful way through the episode of Raghu and Kauts in the fifth canto of the Raghuvansham. Although formal education would begin after the upanayana (investiture of the sacred thread) ceremony, general learning would begin after the cūḍa ceremony (very first haircut of the child) itself

Article 45 talks about the provision of care and education for children up to the age of six years. When one analyses the ancient Indian education system, it is learnt that the responsibility of education was not only that of the ruler but of the entire society. Kautilya considers those parents who do not educate the child as its greatest enemy.

Mātā śatruḥ pitā Vairī yena
bālo na Pāṭhitaḥ|
Na śobhate sabhāmadhye
hansamadhye vako yathā||[21]

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after the *cūḍa* ceremony (very first haircut of the child) itself[22]. Our ancient scriptures, along with boys, laid down provisions for the *upanayana* of girls as well and the study of Vedas by them.

Purākalpe kumārīṇām
maunjībandhanamiṣyate|
Adhyāpanam ca vedānām
sāvitrīvācanam tathā||[23]

According to Article 48, the State shall take steps to organise agriculture and animal husbandry on scientific lines as well as specifically prohibit the breeding and slaughter of cows, calves and other milch and carrier animals.

The Yajurveda speaks of four main duties of the State: 1. Development of agriculture, 2.Public welfare 3.The economic growth of the nation; and 4.Providing for the people—***Kṛṣyai twā kṣemāya twā raiyyai twā poṣāya twā***[24]. The *Atharvaveda* speaks of Raja Prithi, son of Raja Vena, as one who is a pioneer in the field of agriculture[25]. This finds mention in the Shanti Parva of the *Mahābhārata* and *Bhāgavata Purāṇa* as well. In the Vedas, many types of soils, means of irrigation, crops, fertilizers, pesticides and many types of implements related to agriculture are mentioned in great detail[26].The second and twenty-sixth chapters of Kautilya's *Arthaśāstra* describe the management of non-cultivable and cultivable land.

Along with agriculture, many important instructions regarding animal husbandry and enhancement of livestock are also found in the Vedic scriptures from the Dharmashastras to texts on ethics and philosophy. All these were matters of social and national importance to the ancient Āryans. The Vedas, while clearly forbidding the slaughter of milch and carrier animals, says: "Do not kill animals like horses, mules, cows, nilgai, camels, sheep, bipeds and quadrupeds, etc"[27]. The Yajurveda considers the killing of a horse to be a punishable crime—"*Yo Arvantam jighānsati tamabhyamiti Varuṇaḥ*"[25]. The Sanātana tradition in particular, holds the cow to be worthy of the greatest worship."*Gāvo viśwasya mātaraḥ*"(Cows are the mother of the world) is a dictum in which Indian culture and way of life believes in. One cannot find any injunction whatsoever in this culture that sanctions violence against the bovine species. The Vedas declare the cow to be *aghnyā* (*avadhyā* or that which cannot be killed)—***Aghnyeyam sā vardhatām mahate saubhagāya***[29]. In the Vedas, the cow is said to be the mother of the Rudras, the daughter of the Vasus, the sister of the gods and the storehouse of nectar. Therefore, any kind of violence towards the cow does not behove man.

Mātā Rudṛaṇām
duhitā Vasūnām
swasādityānāmamṛtasya
nābhiḥ|
Pra nu vocam cikituṣe janāya
gāmanāgāmaditim vadhiṣṭa||[30]

In the Anushasana Parva of the *Mahābhārata*, the cow is described as the vehicle to heaven and the fulfiller of all desires: *Gāvaḥ swargasya sopānam gāvaḥ swarge'pi pūjitāḥ*[31] In Kautilya's view, the importance of cow is such that he has instructed the king that he should enter the court only after circumambulating the cow and the bull—***Savatsām dhenum vṛṣabham ca pradakṣiṇĀkṛtyopasthānam gacchet***[32]. Kautilya also makes provision for a tax called Gorakṣya for the protection of cows[33]. In the *Arthaśāstra*, the head of the animal department has been called the Godhyakṣa (i.e., head of cows) and the duties of the state with regard to livestock rearing have been described in detail. According to the text, not only one who kills a cow but even the one who steals it is punishable by death—***Swayam hantā ghātayitā hartā hārayitā ca vadhyaḥ***[34].

The Yajurveda considers the killing of a horse to be a punishable crime—"Yo Arvantam jighānsati tamabhyamiti Varuṇaḥ"25. The Sanātana tradition in particular, holds the cow to be worthy of the greatest worship."Gāvo viśwasya mātaraḥ"(Cows are the mother of the world) is a dictum in which Indian culture and way of life believes in. One cannot find any injunction whatsoever in this culture that sanctions violence against the bovine species. The Vedas declare the cow to be aghnyā (avadhyā or that which cannot be killed)— Aghnyeyam sā vardhatām mahate saubhagāya

In fact, under the leadership of Seth Govinddas, some members of the Constituent Assembly had tried to include the prohibition of cow slaughter in the Fundamental Rights. In this regard, he had also cited examples from history and of other countries in his proposal. Seth Govinddas believed that the issue of cow protection was cultural as well as economic. But this issue could find a place only in the Directive Principles.

Article 48A directs the state to protect the environment, promote and protect wildlife. The Sanātana Indian tradition has presented a very systematic thinking about environmental protection and the association of nature with the animal world since time immemorial. Such a scientific approach to the environment is rare elsewhere in world literature. Since the Vedic period, the sages, who were the seers of divine mantras, recognized the interrelationship between human beings and nature and made arrangements for its protection and enhancement. Establishing the affinity of man with every element of nature, Vedic sages consider the sky as the father and the earth as mother—***Dyaurme pitā janitā nābhiratra bandhurme mātā Prithivī Mahīyam; Mātā Bhūmiḥ putro'ham Pṛthivyāḥ Parjanyaḥ pitā sa u naḥ pipartu***[35].

Due to the feeling of respect for nature, Indian tradition addresses all the elements of creation as "Dev", meaning celestial, whose number is considered to be up to 33 crores—***Devo dānādvā dīpanādvā dyotanādvā…***[36]

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The tradition of looking upon rivers as goddesses, which originated with the *Nadī Sūkta* of the *Ṛgveda*, is still present in the Sanātana rituals and traditions. The *Prithvī Sūkta* of the *Atharvaveda* is anincomparable example of the eternal consciousness of environmental protection[37]. The Vedas clearly opine and lay down that water, medicine and the earth should not be polluted—***Māpo mauṣadhī hinsīḥ; Prithivīm mā hinsīḥ***[38]. The worship of trees and plants with many medicinal properties is also an integral part of the Sanātana lifestyle for their protection and promotion. In Sanskrit literature, every tree is said to be as beneficial as ten sons.

Daśakūpasamā vāpī daśavāpī samo hṛdaḥ|
Daśahṛdasamo putraḥ daśa putrasamo drumaḥ||

Injunctions have been laid down in Sanskrit literature for the protection of trees and flora as well as wildlife. In this regard, the illustration of the fifth canto of the *Raghuvansham* epic is very significant. Raghu's son Aja was proceedingwith his armyto Princess Indumati's *swayamvara*. At that moment, a wild elephant began creating a ruckus in his camp. When the elephant could not pacified in any way by the elephant-handlers, Prince Aja, well aware of the rule forbidding the killing of wild elephants, and desirous of only drivingit away, pulledhis bow a little and releasedan arrow (so as to merely goad it into quitting the place)—***Tamāpatantam nṛpateravadhyo vanyaḥ karīti śrutavānkumāraḥ***[39]. It is clear from this illustration that in the tradition of rājadharma, wild elephants are considered protected and cannot be killed. Aja had learnt this from his ancestors.

In *Abhijñānaśākuntalam* too, an ascetic, preventing King Dushyanta from shooting an arrow at an innocent deer, gives the message that the king's weapon(s) should be raised only to protect the oppressed and not to strike at innocent creatures—***Ārtatrāṇāya vaḥ śastram naprahartumanāgasi***[40]. King Duṣhyanta too puts backthe arrow drawn on the deer back in his quiverheeding the ascetic'sorder.

Thus, the sense of conservation towards the environment and wildlife has

been described in detail in Sanskrit texts and literature. The famous Vedic national prayer of the Yajurvedadesires the protection, enrichment and nourishment of each natural component along with the king and the subjects. This is so because the welfare of the nation lies in the welfare of all— ***Ā Brahman Brāhmaṇo Brahmavarcasījāyatām Ārāṣṭre rājanyaḥ śūraiṣavyotivyādhī mahāratho jāyatām dogdhrī dhenur vodhānangvān Āshuḥ saptiḥ purandhiryoṣā jiṣṇū ratheṣṭhāḥ sabheyo yuvāsya yajamānasya vīro jāyatām nikāme-nikāme naḥ Parjanyo varṣatu falavatyo na Oṣadhayaḥ pacyantāmyogakṣhemo naḥ kalptām||*** [1]

In the light of the Sanātana Directive Principles of rājadharma from inference of the whole from the random, an attempt has been made to make it clear from the above perusal of the Directive Principles of the Constitution that no matter how sturdy and scientific the systems based on Western principles are, they may not be equally effective for the subtle resolution of the social, cultural, economic and legal needs ofpeoplewho live in India. While modern governance systems are dependent solely on legislation, the basic Indian concept of the state is based on the legislation that is reliant on dharma. In fact, it is possible to build a welfare state that is free from inequality, exploitation-free and loyal to human values, only on the basis of principles that havethe flavour ofSanātana ideals. Legislation based on Sanātana principles alone is capable of achieving the constitutional goals of justice, liberty, equality and fraternity. Therefore, in view of the contemporary circumstances and the growing role of India on the political horizon of the world, there is today a special need for detailed study, brainstorming and research in this direction with an open mind. There is a need to make Sanātana references a part of legislation. At the same time, there is a need to make them an essential part of Indian lifestyle and culture. This combination of Sanātana references will certainly lead to the great Constitution of India head towards becominga holistic one with a more comprehensive gamut. Only then will we be able to make the dreams of the sages, sages and constitution makers, who contributed in making this nation the greatest, come true.

References:

1. Kashyap, Subhash, *Our Constitution*, National Book Trust, India, New Delhi: 2017, Pg. 125
2. *Atharvaveda* 10.8.23
3. *Raghuvansham* 1.24
4. *Abhijñānshākuntalam*, Vol 5
5. *Abhijñānshākuntalam* 5.4
6. *Abhijñānshākuntalam* 7.35
7. *Mahābhārata*, Shānti Parva 57.11
8. *Uttararāmacarita* 1.12
9. Vajpei, Ambika Prasad, *Hindū Rājyaśāstra*, Hindi Sahitya Sammelan, Prayag: 1941, p.122
10. *Kauṭilīya Arthaśāstra* 1.19
11. *Ṛgveda* 7.6.5
12. *ViduraNīti* 2.17
13. *Raghuvansham* 1.18
14. Tulsidas Dohawali, 508
15. *Mahābhārata*, Shānti Parva 63.29
16. Kautilīya *Arthashāstra* 3.91.3
17. Kautilīya *Arthashāstra* 3.69.13-14
18. *Mahābhārata*, Shānti Parva 91.12
19. *Kāmandakīya Nītisāra* 5. 81-89
20. *Mahābhārata*, Shānti Parva 67.12-16
21. *Cāṇakyanīti* 2.11
22. *Raghuvansham* 3.28-29
23. Kane, Waman Pandurang, Dharmashastra ka Itihas, Part One, Uttar Pradesh Hindi Sansthan, Lucknow: 1992, Pg. 219
24. *Yajurveda* 9.22
25. Tām Prithī Vainyodhok, Tām Kṛiṣhim Sasyam Çādhok *Atharvaveda* 8.10.11
26. Dwivedi, Kapildev, Vaidik Sahitya evam Sanskruti,Vishwavidyalay Prakashan, Varanasi: 2018,Pg. 271-273
27. *Yajurveda* 13.47-50
28. *Yajurveda* 22.5
29. *Atharvaveda* 7.73.8
30. *Ṛgveda* 8.101.15
31. *Mahābhārata*, Anushāsana Parva51.33
32. Kautilīya *Arthashāstra* 14.18
33. Kautilīya *Arthashāstra* 51-51.34
34. Kautilīya *Arthashāstra* 45.29
35. *Rigveda* 1.164.33; Atharvaveda 12.1.12
36. The Nirukta of Āçārya Yāska 7.15
37. Draṣhṭavya Artha Charter Commission 2000, Paris
38. *Yajurveda* 6.22; 13.8
39. Raghuvansham, Fifth Canto
40. *Abhijñānshākuntalam*
41. *Yajurveda* 22.22

''पंडित दीनदयाल उपाध्याय के विषय में जानकारियाँ बहुत ही सीमित हैं। डॉ. महेशचंद्र शर्मा ने इस विषय पर गवेषणात्मक अध्ययन किया है। इस शोध-ग्रंथ का प्रकाशन न केवल जनसंघ की राजनीति व विचारधारा के प्रति लोगों को लाभदायक जानकारियाँ देगा वरन् राजनीति शास्त्र की वैचारिक बहस को भी आगे बढ़ाएगा। दीनदयाल उपाध्याय व भारतीय जनसंघ को समझने के लिए यह शोध-ग्रंथ प्रामाणिक आधारभूमि प्रदान करता है।''

—डॉ. इकबाल नारायण

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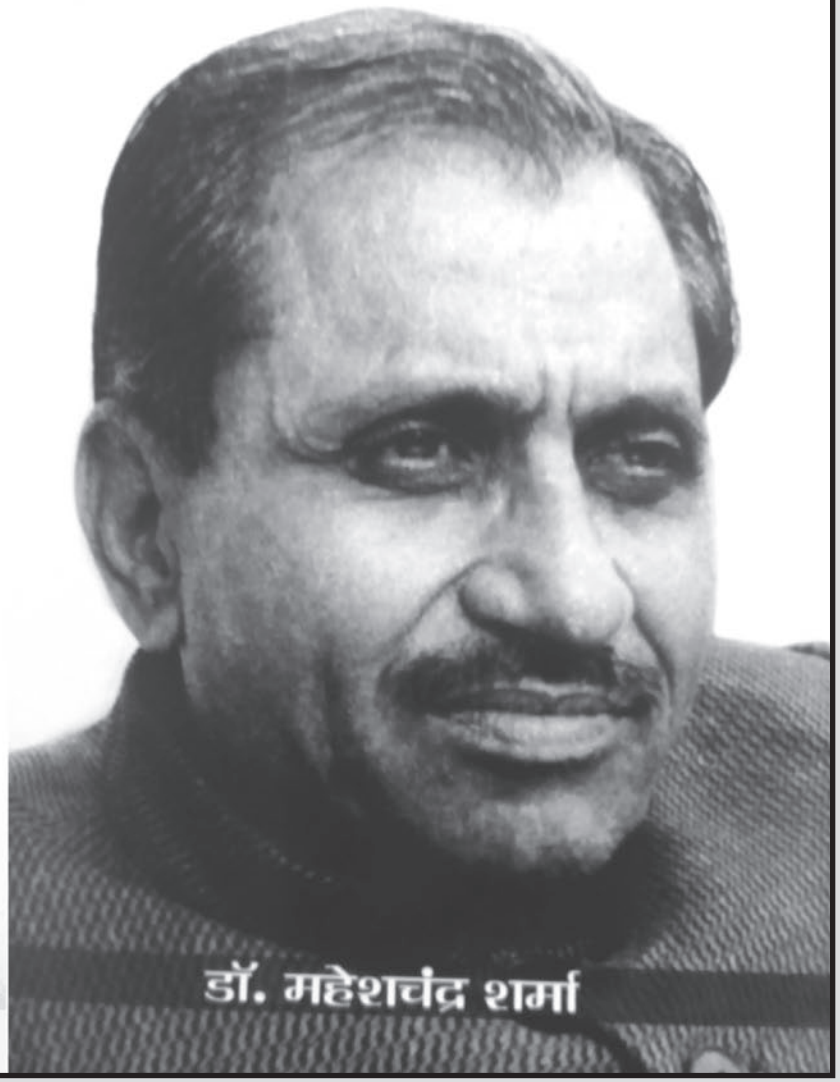

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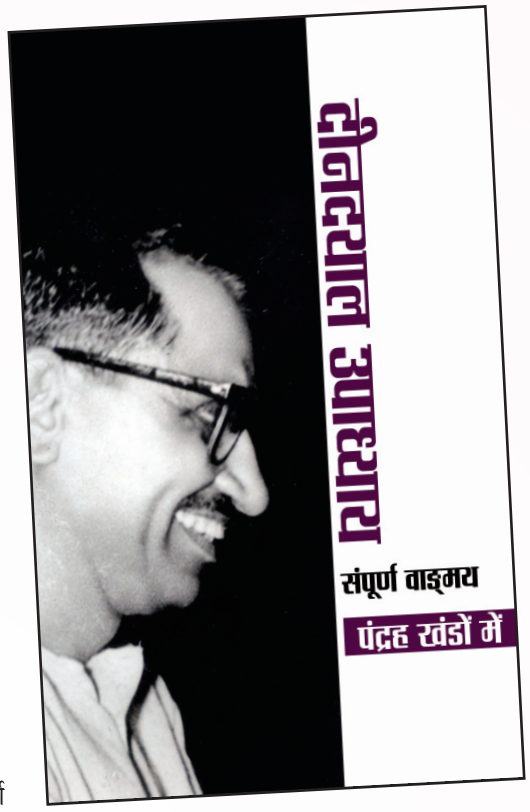

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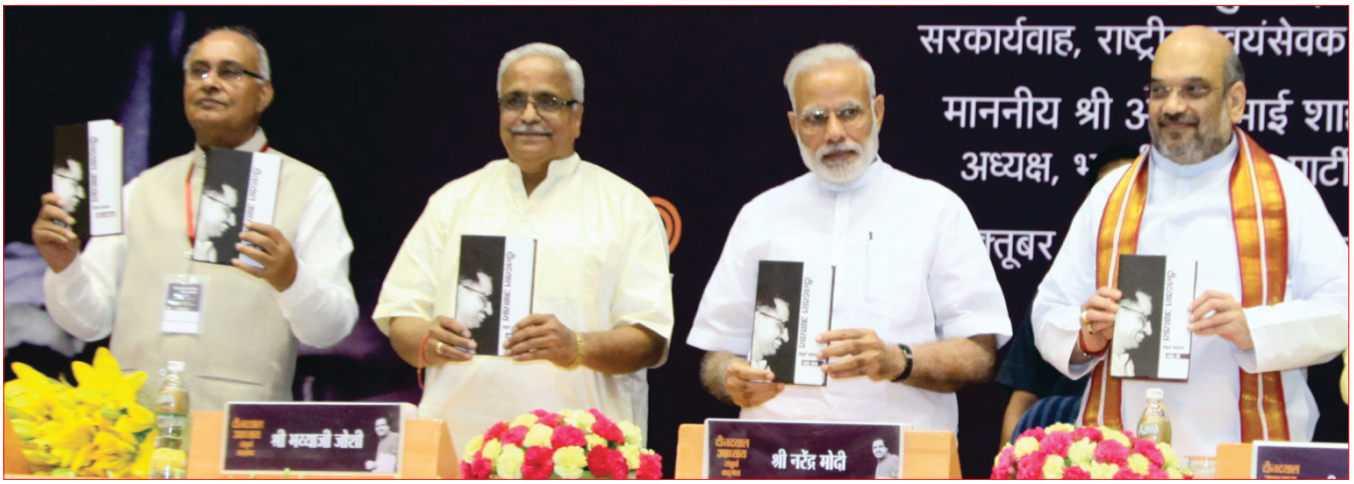

9 अक्तूबर, 2016 को नई दिल्ली के विज्ञान भवन में पं. दीनदयाल उपाध्याय जन्म शताब्दी वर्ष के अवसर पर डॉ. महेश चंद्र शर्मा द्वारा संपादित एवं प्रभात प्रकाशन द्वारा प्रकाशित 'दीनदयाल उपाध्याय संपूर्ण वाङ्मय' के पंद्रह खंडों का लोकार्पण भारत के प्रधानमंत्री मान. श्री नरेंद्र मोदी, राष्ट्रीय स्वयंसेवक संघ के सरकार्यवाह मान. श्री सुरेश (भय्याजी) जोशी व भारतीय जनता पार्टी के राष्ट्रीय अध्यक्ष मान. श्री अमित शाह के करकमलों द्वारा संपन्न हुआ।

''यह पंडितजी की जीवन-यात्रा, विचार-यात्रा और संकल्प-यात्रा की त्रिवेणी है। यह दिन इस त्रिवेणी का प्रसाद लेने का दिन है। पं. दीनदयाल उपाध्यायजी कहा करते थे कि अपने सुरक्षाबलों को मजबूत किए बिना कोई राष्ट्र अपनी स्वतंत्रता को अक्षुण्ण नहीं रख सकता, इसलिए सुरक्षा-तंत्र मजबूत होना ही चाहिए। पंडितजी द्वारा कही गई बातें आज भी इतनी ही प्रासंगिक हैं।''

–श्री नरेंद्र मोदी, प्रधानमंत्री, भारत

''विचारों का छोटा सा बीज पं. दीनदयालजी ने बोया था, आज वह वटवृक्ष के रूप में खड़ा होकर न केवल भारत बल्कि पूरे विश्व की समस्याओं को सुलझाने की दिशा में अग्रसर है। उनका साहित्य उनकी सरलता, दूरदर्शिता और संकल्पशक्ति का परिचय कराएगा।''

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